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acclaim ; George Bernard Shaw, H. G. Wells and Havelock Ellis being among those who expressed keen interest in and appreciation of his work.

The present volume deals with the hazards which one man faced in opposing its reactionary elements of entrenched institutionalism — ecclesiastical, legal, economic. But the author holds no bitterness ; as he says at the beginning of this book :

“It is hardly necessary to point out that, though enemies were inevitable in such a struggle, I hold no personal bitterness towards them. After all, my war was not against people, individually or collectively. It was against the evils of a social system.”

■

**W**ITH the possible exception of Mr. Justice McCardie, Judge Ben Lindsey is the most quoted man in his criticisms on modern marriage. His outspoken views have gained for him a position in the forefront of enlightened thought on this controversial subject and his experiments with his Juvenile Courts have been watched with interest throughout the world.

For twenty-five years he has been in intimate contact with men and women who were unhappy, and maladjusted spiritually, mentally and sexually. It is not to be wondered therefore, that his autobiography is replete with human interest.

His two previous books published in this country, **THE COMPANIONATE MARRIAGE** and **THE REVOLT OF MODERN YOUTH** won wide





# THE DANGEROUS LIFE

*By the Same Author*

THE  
COMPANIONATE MARRIAGE  
In collaboration with WAINWRIGHT EVANS

THE REVOLT OF  
MODERN YOUTH  
In collaboration with WAINWRIGHT EVANS

*The Bodley Head*

# THE DANGEROUS LIFE

*by*

JUDGE BEN B. LINDSEY

*and*

RUBE BOROUGH

LONDON

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## PROLOGUE

My work on the manuscript of *The Dangerous Life* was interrupted in November of 1930. At that time I was sojourning in Los Angeles and had planned to remain there until the book was finished. During the previous spring, I had promised to address the Churchmen's Association in New York City, in response to an invitation to discuss what I called *The Companionate Marriage* programme for the improvement of legal marriage.

The invitation which came through Reverend Eliot White, Chairman of the Programme Committee and associated with the Grace Episcopal Church, was so cordially expressed and conveyed such a tolerant viewpoint that I accepted with alacrity. To help defray the expenses of such a long trip, I had arranged a few modest open forum lecture engagements in the vicinity of New York and Boston. I had planned, at the conclusion of my engagement with the Churchmen's Association, to hurry back to Los Angeles and finish my book.

My plans were suddenly and unexpectedly upset.

A few days before December 1st, 1930, Reverend Eliot White came to my room at the Algonquin Hotel to say that the Right Reverend William T. Manning, the bishop of the great New York Episcopal Cathedral of St. John the Divine, had telephoned him, peremptorily demanding that the invitation be withdrawn. In addition, he insisted that he himself should be substituted for me as the chief speaker, so that he could tell the assembled clergymen what my views on marriage are and who I am. I was not even to be present to hear what he had to say.

His Highness the Bishop never considered that the Churchmen's Association had the right to be consulted in this matter. But as events developed, this point was finally raised and contested. A dispute impended, and the

press took up the issue. On the morning of December 1st, 1930, the *New York Times* carried a front page story of the conflict between the bishop and the Churchmen's Association. Such publicity was responsible for the largest meeting the association had in ten years. In secret session and behind closed doors, the demands of the bishop and the question of free speech were fought out.

Newspaper reporters, waiting outside the meeting room, were informed that the issue had been decided against the bishop. Although nothing was said about the vote, the rumour spread that those opposed to Bishop Manning were in an overwhelming majority. Some of the papers said that only three, but none put the estimate higher than six, of the seventy-seven clergymen, present and voting, had shared the bishop's viewpoint.

As a consequence, I was given a most respectful and courteous hearing by the association on the subject of "The Companionate Marriage." My speech merely proposed the yielding of some antiquated laws to the actual customs and habits of modern marriage.

My first victory in the skirmish for free speech aroused Bishop Manning's rage to the point of fury. He determined to deliver a "chastisement sermon." He announced that he would castigate me the following Sunday morning from the pulpit of his mighty cathedral. Nothing of the perilous portent of the sermon was concealed. In order to make his rebellious clergy black, it was necessary, according to what was given out to the press, to make me blacker. Not only my views, but my character would be assailed from the pulpit. I announced that I would be present. I was there. At the conclusion of his false, abusive tirade against my views and my character, I interrupted him.

The stirring adventures that followed were new and thrilling episodes of "The Dangerous Life." These we have now added as the Epilogue of this book.

BEN B. LINDSEY.

February, 1931.

## INTRODUCTION

*The Dangerous Life* will make plain to the public for the first time the full import of the work of Ben B. Lindsey, founder of Denver's Juvenile and Family Relations Court.

*The Revolt of Modern Youth* and *The Companionate Marriage*, in which Judge Lindsey with the assistance of his previous collaborator, Wainwright Evans, attacked the problems of modern marriage and divorce, roused an international furore that, to some extent, obscured the character of its author and his major contribution to human welfare.

As the present collaborator sees it, no one can understand Judge Lindsey who does not understand the tremendously significant institution of human relations that he built up in Denver through nearly thirty years of toil and conflict, in the Juvenile and Family Relations Court. All of his ideas and programmes, of which *The Revolt of Modern Youth* and *The Companionate Marriage* are but a part, grew naturally and logically out of his work in the court.

*The Dangerous Life* ties *The Companionate Marriage* and *The Revolt of Modern Youth* into an historic background.

The method of writing the present volume was simple. Judge Lindsey dictated to this collaborator an enormous mass of material on the court and the many political battles accompanying the upbuilding of the institution of human relations.

The collaborator then transcribed his stenographic notes and began the task of selection, organization, condensation, retaining as far as possible in the finished product the language of the original notes.

A man who labours as sincerely and effectively for human progress as has Judge Lindsey has a right to be understood.

Judge Lindsey MUST be understood. The collaborator will be happy if subsequent events prove *The Dangerous Life* has contributed to this end.

## INTRODUCTION

Finally, may the collaborator express his appreciation to H. B. R. Briggs, publisher of the Los Angeles *Record*, a Scripps-Canfield newspaper, and to Gilbert Brown, its editor, for their friendly co-operation in arranging his editorial work so as to make this collaboration possible?

RUBE BOROUGH.

## IN APPRECIATION

FIRST and foremost of Henrietta Brevoort Lindsey.

As wife and comrade she has more than loved me.

She has befriended and helped me.

The most intelligent, beautiful and loveliest of women.

She shared the joys and sorrows of "The Dangerous Life" with me.

For nearly ten sacrificing years, of the now near twenty that we have collaborated together, she lived with me in the basement half-cellar of our modest home at 1343 Ogden Street in Denver. It then had to be rented over our heads to "carry on." But the lovely artistry of her heart and head and hand so fashioned it as a place of beauty, even to its kitchen she made from the old coal cellar adjoining, that our friends envied, rather than pitied us, when they saw and felt its cosy charm and comfort. Here they often foregathered to enjoy with us the happiness of the cheer her sweet spirit gave it. We had called it "The Cyclone Cellar." For in it we retired from the troubled world outside to plan our work and defend ourselves against "The Beast."

With a fortitude, and understanding and a patience rare in any life, she shared with me all the dangers. It was her understanding and courageous spirit that strengthened and helped me time and again. It is the inspiration of her presence that has made possible most of the work I have been able to accomplish during our life together.

Of Rube Borough, the brave Los Angeles Liberal, who has contributed his valuable aid in the writing of the book and arrangement of its contents.

Of the faithful juvenile court officers who helped to make possible the success of the court and its development into a new institution of human relations through their tireless service for the thousands of mentally sick and distressed men, women and children passing our way.

And, finally, to the tens of thousands of earnest sympathizers who have written me and felt for me from all over the world as I have passed through the successive crises of "The Dangerous Life."

To all those who have helped, this book is gratefully dedicated.

*The Dangerous Life* deals with the hazards which one man faced in opposing its reactionary elements of entrenched institutionalism—ecclesiastical, legal, economic. It is hardly necessary to point out that though enemies were inevitable in such a struggle, I hold no personal bitterness toward them. After all, my war was not against people, individually or collectively. It was against the evils of a social system.

BEN B. LINDSEY.

DENVER, COLORADO.

February, 1931

# THE DANGEROUS LIFE





THE THEME. . .



# THE DANGEROUS LIFE

## THE THEME . . .

IN the city of Denver my enemies are temporarily triumphant. They have shut me out of the work of a lifetime.

As controlled by its majority, a politically prejudiced and personally hostile judiciary has ousted me from the court where for twenty-eight years I pioneered the way to a new technique in handling troubled children and baffled adults.

To guard against my return to the court by vote of the people, that same judiciary in Colorado has deprived me of the right to practise law, my chosen profession.

The word has gone forth: "Get Lindsey. Deprive him of his means of livelihood. Rid the city of this dangerous man. Drive him from Denver."

I am writing without self-pity, without self-glorification. I shall strive to tell only the truth, with heart and mind freed from the inhibitions of fear and false modesty and opened frankly to an inquiring world.

And the truth is that what happened to the public official, Judge Ben B. Lindsey, is tragic—any other representation would be false. It is tragic to America. And that is what justifies this story of *The Dangerous Life*. That is why it must be burned into the consciousness of my country.

In the first place, I hasten to assure my readers I am no misanthrope. Thirty years of battle have left me with a still flaming hatred of political corruption and social injustice but without personal animosity. I do not strike at individuals—they have their hour of petty triumph, these tools of tyranny that have brushed against me, and then pass on to emptiness. Let the great void claim them.

I am a friend of man—I do not claim particular credit for it. I was born that way. The touch of human hands, the

light of human eyes, the sound of human voices, the comradeship of human souls have been ever dear to me. And the sight of human suffering has not left me cold. Some men could see it and not be moved. But for me there was a wrench and a hurt in it. I could not stand silently by. I had to cry out. Again I do not claim credit—I was born that way.

My life work arose out of my love for Denver, for the very concrete men and women and boys and girls who lived on its mile-high plateau.

Denver is my home—and no man rends his own home. I came to Denver as a boy. I saw it rise in the midst of its encircling mountains and spread over its lovely plains, green in spring and summer showers and sunshine, white under winter snows. I saw its row of red brick homes building under the shade of thriving elms and maples, striving toward a brilliant sky.

The romance of the early pioneers, of the days of the fevered quest for gold, thrilled me as they would thrill any alert, growing boy. I revelled in the exploits of daring men who had braved the perils of the wilds in the great American migration that peopled a continent and established a nation. My background is the background of the growing West and expanding America—it is a precious heritage for which I am profoundly grateful.

After the quest for gold came the romance of the range with cattle and sheep grazing on vast plains and a thousand hills. The coal mines entered and, to the north and south, oil gushed forth—all in Denver's empire. The back country was filling up. Fertile farms appeared. The products of the soil had to find their market. Seven railway lines, with their shops, tied all this human activity into Denver, pouring through the city a stream of wealth for the consumption of the nation.

Denver became a great distribution and financial centre. I saw it grow from a village to a city of 300,000 people.

And while all this was going on, may I suggest, I, too, was building. It was my good fortune to play a rôle in the movement for the conservation of Denver's most precious asset, the child. With the aid of others I became the founder of its Juvenile and Family Relations Court, and institution of human relations that was to shatter a vicious, destructive system of dealing with the problems of childhood and parent-

hood and to introduce the methods of modern science and human understanding.

This early work was not unappreciated. It was hailed all over America and even in foreign lands as a distinctive contribution to human progress. Locally, it was enthusiastically received. Women's clubs, churches and the chamber of commerce united in its praise.

The chamber of commerce gave a reception in my honour. Philanthropic men and women assisted our work for the children. They helped with charity benefits and contributed to the Fresh Air Fund, the summer camp, the day nursery with all the delighted eagerness of Lady Bountiful herself.

The president of the local water company headed our juvenile improvement and protective associations, backing our campaigns for funds. I was elected chairman of a Y.M.C.A. building committee, member of the board of trustees of Denver University. And in the spring of 1904, the impeccable university conferred upon me an honorary degree.

How well I remember that incident—a church auditorium crowded with the year's graduates, their fond parents and friends gathered for the opening exercises and the Reverend Henry Augustus Buchtel, Chancellor, pouring his praise upon our court.

"If Christ came to Denver," he said, to my blushing confusion, "He would go straight to your court; for there you are doing the Master's work."

And then I began to deepen and broaden that work, to peer from effect to cause. And across my range of vision rolled cotton mill and beet fields with their pitiable child slaves and the dance halls and vice dens of the underworld.

And I found that these influences that were under-mining childhood were in league with the capitalistic powers of Special Privilege, the real political masters of our city and state.

I saw these political masters clearly, all too clearly, as devious and diverting a set of industrial and financial captains and political geniuses as ever operated in America. They headed:

1. The Denver Union Water Company, with its valuable water and power sites back in the mountains.
2. The Denver Gas and Electric Company, to-day the Public Service Company.

3. The Denver Tramway Company.
4. The Mountain States Telephone and Telegraph Company.

These public utilities were founded upon privileges and franchises, either had or to be had, that gave them monopolies in the necessities of the people. They controlled political parties and public officers, using them as needed to get and keep these privileges.

But this was not all of the picture, as I learned to my sorrow. For the privileged capitalistic groups manipulated as their most effective allies the reactionary elements of the press, the clergy and the bar and they had the staunch support of the reactionary leaders of the world of industry, commerce and finance.

In short, in these powers I faced a whole system and the System's State.

For me there were two choices.

I could continue to deal with palliatives, ignore fundamental causes as scores of juvenile court judges have done and are still doing in America. I could sit in a state of supine inaction recently recommended by Calvin Coolidge, whose proudest boast is that as President of the United States he "minded his own business."

*Or I could fight.*

I chose to fight.

Theodore Roosevelt, returning to America in 1910 from his famous hunting expedition, said: "Lindsey, you have braved more dangers fighting the Beast in Denver than I ever encountered in the African jungles."

I chose "The Dangerous Life." And the war on me as Denver's juvenile court judge began.

I was investigated by grand juries—like Socrates of old I had, with my theories, "corrupted the morals of youth." Bar associations investigated me. Libel suits were hurled against me. Political bosses kept off party tickets, forcing me to the heavy expense of running independently for re-election. In two separate election years I was compelled to run twice in six months because of legal questions raised about the status of my office.

Social ostracism faced me—this was no real loss but still, at times, it hurt. Lying, scandalous stories were spread

about me. My wife and loyal co-worker was not spared from these attacks. Even our little child was included. Serpentine witch-women—and witch-men—revelled sadistically in gutter smut.

Armed enemies, on several occasions, tried to assassinate me.

And as these penalties piled up all but a few of our Denver friends passed on and out of our sight—it was too much to wear the taint of “Lindsey.”

So much might have been borne without serious detriment or lament. No man who starts out seriously to serve society expects the plaudits of the powerful. The javelin jabs of hostile criticism, the cat calls of derision, must be anticipated along the way—if only the way be left open to him, he is content.

And so I struggled on. I beat my enemies in many a battle—for the people were with me, as they are with me to-day in Denver.

I saw my work round out to fruition. In Denver and all over the world the seeds I helped to plant had taken root and flourished.

And then—out of the clear sky of mid-day, darkness fell and the way was closed to me!

No constraint of convention must here deter me from full revelation. The tragedy must not be obscured. A state supreme court, beholden to the Powers of Privilege, struck me down with one savage blow. Resorting to the simple expedient of throwing out a certain precinct in which I had received an overwhelming majority in the election of 1924, that court, in 1927, held that I had been illegally elected.

Then it dallied and watched me squirm.

But there was still too much life in me. The people were friendly and the ousted judge might yet return to power.

So on December 9, 1929, it struck again. It disbarred me, closing against me the door of the Juvenile and Family Relations Court in Denver and robbing me of my means of livelihood.

I was literally wiped out.

Human fears assailed me, fears for my wife and child, fears for my own future in the evening of life. It would be hypocritical not to admit as much. But these could be mastered, for I was still in the full vigour of my powers.



It was grief over my lost work and a bitter sense of life's futility that hurt most. In the days following the court condemnation I walked the streets of Denver in a daze. At night I passed the court house, where for twenty-eight years I had carried on my work, looking up at its darkened rooms with unutterable yearning.

In those rooms I had brought back to decency and citizenship thousands of boys and girls, saved from destruction thousands of homes, written dozens of items of legislation that, after years of struggle, had become part of the established laws not only in my own state but in many other states and in foreign countries.

And as I looked I saw men, women and children, with their deep, dark secrets and their wretchedness, again streaming up the stairs to those rooms. I knew their desperate need of sympathy and understanding. I saw them met by the dapper judge who had succeeded me—one of whose first reported official acts had been to raise his bench eighteen inches above its old level in order to widen the gulf between himself and the people. I heard the cry of these people for the bread of life, the artistry of love, the glowing technique of service, answered by the same cold formalism that I had driven from the court a quarter of a century before.

My heart ached, my eyes were blinded with tears.

I fought against despair. For here was the work of my life turned into mockery through the incompetence of those who, despite their hypocritical pretences before the pious, had never spent a day to equip themselves for our court's responsibilities, had never made one sacrifice or shown one moment's interest in the theory, practice and accomplishments of that court and, for the time at least, had no purpose except to hold a job and a salary and to use them as stepping stones to some other job and salary.

Gone, all gone, the toil of a quarter of a century because of the savagery and greed of the forces bent ever on power and more power.

This was my Gethsemane!

As I write I shall try to minimize the hurt to my enemies. I have no desire to punish—and hurt—any human being.

But my obligation to you, my readers, is greater than my obligation to any individual who happened to play a sordid and painful rôle in this Denver drama.

For your sake I must not suppress the essential truth. You must know what happens to a public servant who seriously and persistently tries to advance the cause of justice and humanity.

I must be frank—and bold

And now to the story of *The Dangerous Life*.



*PART ONE*

THE YEARS OF PREPARATION



## CHAPTER I

### WHY I FOUGHT

My "political" disbarment, December 9, 1929, by the Colorado Supreme Court<sup>1</sup> ended, for the time at least, all possibility of my re-election as judge of Denver's Juvenile and Family Relations Court.

After thirty years of fighting I found myself shut out of the field of local political controversy.

I had time and opportunity, at last, to think dispassionately and to attempt some kind of evaluation of my hectic career and of my service to the public.

And, incidentally, I was free to evaluate myself. All my life I had been closely studying the motives—the springs of action—of others: young children not yet in their teens, adolescent boys and girls, grown men and women. I had been too busy with this study and the political conflicts that grew out of it to be concerned with my own inner life.

But now as I looked back through the turbulent three decades—the frequent clashes with the enemies of childhood, the bitter campaigns against the privileged capitalistic franchise-owning groups, the struggles against religious intolerance and prejudice, the revolt of youth, in which I had joined, against the mediæval brutalities and immoralities

<sup>1</sup> That the disbarment was entirely "political" need not be argued at length here. It may be briefly stated that the charge against me was that I had practised law while on the bench. "Practising law," in my case, consisted of serving, entirely out of court, as a mediator in the celebrated Stokes will cause dispute in New York City, a service which, in no conceivable way, could have affected any act of mine as judge of Denver's Juvenile and Family Relations Court, which had no jurisdiction over property matters. It should be further noted that the voluntary settlement upon me by Mrs. Helen Elwood Stokes, following this service, of an income of \$200 a month to which her New York attorney, Mr. Samuel Untermyer, also contributed, was formally approved by the Denver probate court. Also, remember, all but one of the members of the Colorado Supreme Court were political enemies of mine, several of them extremely hostile because of the persistent manner in which I had attacked them and their

of the marriage relationship—I was impelled to take mental stock of myself.

Here were my enemies saying, in effect: "Lindsey is only an intractable belligerent."

Here were some of my personal friends insisting: "Lindsey is only a fool idealist."

To my enemies I reply: "None knows better than yourselves my willingness and ability to subordinate self and co-operate with others in a just cause. None knows better how that subordination and co-operation have whipped you in campaign after campaign of Denver and Colorado politics."

To my friends, tired of the maelstrom, yearning for escape, I answer: "The long fight has brought me light, a richer consciousness of life, a hope for a better future for mankind. What have you instead to offer?"

In a somewhat spectacular way it has been my lot to live "The Dangerous Life." My particular dangerous life called for a hardy intellectual individualism, an insistent loyalty to my own point of view in the midst of the shoddy half truths of the social cowards.

In all sincerity, I do not claim credit for myself for whatever of virility I may have exhibited.

I was born that way—

And yet, that, of course, is but part explanation.

Without speculating as to the relative importance of heredity and environment I must here recognize the fact that in the latter years of the nineteenth century and the first decade of the twentieth the vital democracy of America was again stirring.

---

corrupt corporation alliances. Finally, as proof of the "political" character of the disbarment, it should be noted that the California state bar, a detached body of inquiry aloof from the influences of impassioned local politics, later refused to disbar me—and this with the entire records in the Colorado disbarment case before it; so that I am still an honoured member, in good standing, of the California bar. Thus I am a lawyer with the rights of a lawyer in every state in the Union except Colorado, from which state I am only in temporary exile as a lawyer until the return of Justice.

It appears also that this "disbarment" shows no just cause for such a result. It was merely used as the technical legal peg on which to hang me for my social and economic "heresies," my enemies hoping that by such brutal, cowardly, and cruel methods I should be discredited and thus shorn of strength in battling for the causes of human justice that I have advocated. (See also p. 294.)

The West was in revolt against privilege.

First came the Populist uprising, then the Bryan crusade of 1896, then Roosevelt, then Wilson. The political and social idealism of Patrick Henry, Thomas Paine, Thomas Jefferson, Andrew Jackson—the finest tradition of the nation—was again asserting itself after the sodden days following the Civil War.

I was part of that surge. Action and reaction in it helped to mould me. Direct contact with the great souls of the age vitalized, inspired me. I could write a whole book on this phase of my life—it is my mine of gold, this life-long *camaraderie*, that has consoled me in the desperate, sometimes hopeless, combats with a senseless, ruinous materialism.

But more important than these influences, perhaps, were the subtle forces at work in my childhood. As I try to recall them to-day they emerge one after another from the almost forgotten past with ever increasing significance. The twig was being bent; the tree was in the making.

I shall here set down these early influences, leaving the reader to judge as to their importance and to sum them up for at least a partial answer as to the reason for *The Dangerous Life*.

I was born November 25, 1869, in Jackson, a town of 10,000 population in western Tennessee, half way between Memphis and Nashville. My father, Landy Tunstall Lindsey, a tall, distinguished-looking man, was a native of Mississippi. He had been a captain in the Confederate army and had served with General Nathan Bedford Forrest, the South's brilliant cavalry officer. For a time my father had been secretary to General Forrest and had helped him write his autobiography.

How well I remember my father's stories of the venture-some life he and other cavalry officers of the Confederacy led, how they worked and fought under constant handicaps and difficulties! Being a telegraph operator by trade, he used to tap the wires of the Northern armies and intercept their messages. His life was thus one of never-ending danger.

There was, too, the story of Sam Davis, the young hero of the Confederacy who was hanged by the Union forces at Pulaski, Tennessee, as a spy. Working in the Union lines he had gained possession of detailed drawings of the principal



Union fortifications in Tennessee but was captured before he could deliver them to the Confederate army. Offered his life if he would divulge the source of his information, he declared: "I would die a thousand deaths before I would betray the confidence of my informant." And he then serenely mounted the scaffold.

These tales, I think, had their influence on my life. They early created in me a desire to do the things I considered right, regardless of their consequences—as men like Sam Davis and General Robert E. Lee, my ideal of a great man and a great soldier, had done.

My father was employed as a telegraphist by the Western Union and became manager for the company in Jackson. In addition to his own work he used to help young boys learn his trade. In after years, I remember, I received a letter from a veteran telegraph operator who had been stationed in Houston, Texas, for forty years. He said my father had been responsible for his success in life.

I remember my father telling once about his great-grandfather who had come over to this country from Scotland with his brothers and settled in Virginia.

One of these brothers remained loyal to the king during the American Revolution, but my great-grandfather and another brother joined the armies of Washington and after the Revolution they changed the spelling of the family name from "Lindsay" to "Lindsey."

In a cemetery in a little town in Virginia, my father told me, was a burial plot on one side of which rested the "Lindsays" and on the other the "Lindseys"—separated in death as in life by the Revolution.

My mother, Letitia Anna Lindsey, was the daughter of Benjamin Barr, a Scotch-Irishman from North Ireland. Her mother came from Wales. Benjamin Barr was a Presbyterian but his wife was a Methodist. She had arrived in North Carolina as a babe in arms in a migration headed by John Wesley. My earliest recollection of my grandmother was of her shouting in a Methodist church meeting. She was almost fanatically devoted to her religion but the stern Scotch-Irish Presbyterianism of my grandfather seemed to admit of little or no emotionalism.

I remember hearing him say that he started out as a Presbyterian but wound up as a "free thinker." At the

time I had only a hazy idea of what the term meant—I thought it stood for some new kind of religion.

When this grandfather came to America from Ireland he had settled near Pittsburgh and had gone to work for a big commercial house in that town. Later his employer sent him to the wilds of western Tennessee and he located in Jackson, then a small trading centre in the Mississippi delta country that had been named after General Andrew Jackson. It was here that he met my grandmother.

Benjamin Barr had little sympathy for slavery but he became a planter near Jackson and this, of course, meant the ownership of a certain number of slaves. Before the Civil War he offered some of them their freedom but they refused to accept it, preferring to stay with him. Some of them lived with him long after the war.

On this plantation my mother was born and reared in a home regarded as one of the finest in that section. It was a typical old-fashioned Southern mansion with big pillars in front and a broad expanse of yard dotted with magnificent elms planted by my grandfather.

The plantation was the gathering place of the belles and beaux of the South and many dashing romantic young officers of the Confederacy and their ladies were entertained there before and after the war.

Among these officers was my father. An attachment sprang up between him and my mother that resulted in marriage about a year after the war. They made their home on this Southern plantation and it was here that my brother, a year and a half my junior, and I grew up.

It was a rather free and easy life for my mother. There were plenty of servants for the day's drudgeries and there was plenty of time for riding and other diversions of the time.

My mother was accounted a Southern belle. Her Irish beauty and wit made her quite popular through the countryside.

My father was a man of high ideals and a great reader of books, which he was always accumulating—at times so fast that he had difficulty in paying for them. My mother was not entirely in sympathy with this practice.

Many rumours began to come to us from the West about the new El Dorado in Colorado. Silver and gold had been

discovered in Leadville and the surrounding country, demanding the building of railroads and the extension of telegraph lines.

Despite the fact that he and his family were happily located in the plantation home, my father was tempted by the spirit of adventure and yearned to go to Colorado to better his prospects. So when he received an invitation to take charge of the telegraph service on a new rail enterprise he set forth for Denver, leaving my mother and her children to join him after he had become settled in the wild and woolly West.

My brother and I were typical farmer boys. We rode horseback and herded the cows, many of which with their calves used to get lost in the swampy section of the estate that skirted a little river flowing to the south of the town of Jackson and emptying into the Mississippi some sixty miles beyond.

We lived a great deal with "the darkies"—as we called the negroes. We had our coloured "Mammy" whom we loved and we played with negro children. And I suppose that this accounts for the fact that I have always felt an affection for the coloured people, who in later years were my strongest supporters and friends. I have never had any of the prejudices of the average Southerner against the negro. I have always felt he never had a square deal, that on the whole he had been unjustly dealt with and I have ever been ready to champion his cause. . . .

And then there were our dogs, as dear to us as our human companions. I think the most poignant experience of my childhood was when our favourite dog, Pete, was shot by a neighbouring farmer who had mistaken him for another marauder which had made a raid on his chickens.

I took the side of Pete and perhaps my first case as an advocate was to prove his innocence, even though he was already dead.

I remember how utterly inconsolable I was for days and nights thereafter. I simply would not be comforted. With all my love for members of the family I doubt if the death of any one of them would have meant more of tragedy to me.

The experience stands out in my memory, never to be eradicated, as the first terrible injustice that brought bitterness to my soul.

Dear old Pete! He was our chum, our defender! Even when we sat at night before the great log fire in the basement of our Southern mansion he was always with us—smuggled in, despite the half-feigned opposition of my grandfather, who was devoted to Tip, a little Scotch terrier and the frequent object of jealous attack from Pete.

This Scotch-Irish grandfather, with whom we lived, was a powerful bluff old man. In my childish curiosity, I remember, I once asked him if he was Irish. He gave me a withering look.

"Scotch-Irish, Sir," he corrected me, "damn you, Sir, Scotch-Irish!"

He frequently swore like a pirate. But, curiously enough, until long after I had reached maturity I never swore, however much the temptation.

I remember I once asked my grandfather who his ancestors were. Again he gave me that curious look and fairly shouted: "Free booters, Sir, free booters!"

Lest I might misunderstand my ancestors and regard them as deeper-dyed than they were, my grandfather later explained to me—I think while I was under some momentary distress at the thought that some of these ancestors might have been hanged, as they probably were—that they were rebels during the wars of the Stuarts in Scotland and, having been on the losing side, some of them fled to the north of Ireland; but that, since they fought for what they believed was right, they were real heroes and I should so regard them.

I know that my grandfather was a man of impeccable integrity. Nothing was so terrible to him as a lie. He was frequently foreman of the grand jury and it was not uncommon for him to explode into violent temper as he poured out his denunciation upon some under-handed piece of political crookedness that I afterwards came to recognise as not so far different from the crookedness of the special interests of Denver and other American cities.

For such cultural significance as it presents it may be here noted that the religious background of my mother's line was evangelistic, diluted with the scepticism of "free thought."

My father's line brought me up against the formalism of Episcopalianism. On both sides my father's people were devout Episcopalians. Incidentally, my father's mother came of a New England family by the name of Greenleaf. As I

understood it, she was a relative of John Greenleaf Whittier, the poet, and Simon Greenleaf, the great lawyer who was the author of a book on evidence.

My father interested himself in the little Episcopalian church in our town, while my mother, under the influence of her Welsh mother, retained her membership in the Methodist church.

As far as I can remember these separate interests caused no discord between my parents. My father contended that his church and mother's were, after all, both Episcopalian—though his, of course, was the really authentic, historic institution. He always insisted that John Wesley, "Methodist Episcopalian," had never left the Episcopal church.

I can well remember my father in a surplice performing the services of a lay reader in the Episcopalian church. He became very much interested in what was known in those days as the "Oxford movement." This concerned the controversy between the Church of England and the Roman Catholic Church that became quite heated both in England and America and resulted in an exchange of religions by members of both Churches, some Catholics becoming Episcopalians and some Episcopalians going over to the Catholic Church under the leadership of those distinguished English churchmen, Manning and Newman, who afterward became cardinals of the Catholic Church.

My father was a great admirer of Cardinal Newman, and followed him out of the Church of England, ending a devout convert to Catholicism, to which he gave much of his time and money in that formative period of my childhood.

My mother joined him in this conversion—whether out of mere loyalty to him, as I have often suspected, or as the result of her deliberate conviction, I do not know.

I do know that her change of faith for the time almost caused an estrangement between her and her father. He had lived in the north of Ireland, as I have before related, and I had frequently heard him tell of the controversial sermons in that section and of the knock-down-and-drag-out fights that occurred on the way home from church between the communicants of the contending denominations.

All this, I must admit, did not give me a very good impression of orthodox religion, since both in his description of those historic feuds in Ireland and now here in my own

family I saw that the thing that was supposed to promote peace and happiness was having quite the contrary effect. And as I look back upon this sort of controversial environment to-day I feel quite sure it is incapable of producing a good effect upon the sensitive, formative mind of childhood.

In those early days I was sent to the little parish school conducted by the nuns and the priest of the local Catholic church. I remember that the principal thing taught me was the catechism. I had a terrible time learning it and as I recall the experience now I am confident that I understood practically none of it.

In a Southern town like Jackson, to be a Catholic was to be almost ostracized. There were few Catholics in the community as compared to the Baptists and Methodists who constituted the overwhelming Church element with a smaller representation of Presbyterians and Episcopalians.

I remember that there was one Catholic sister, who afterward became a mother superior, Mother Mary Pius, for whom I formed a deep attachment—as did also my mother. I knew her to be a saintly woman sincerely devoted to her religion and until her death, perhaps forty years later, I always held a tender affection for her however much I later differed with the creed and dogma upon which her faith was based.

About my tenth year my mother joined my father in Denver and a few months afterwards my brother and I were taken to St. Louis by the husband of my maternal aunt with whom we had lived in Jackson and by whom we had been mothered in the old Southern mansion.

At St. Louis we were turned over to the Pullman conductor and began the long, slow ride to Denver.

The thing that concerned us most on that trip, I remember, was the thrilling possibility of seeing Indians and buffaloes. We were constantly staring out of the windows into the great open spaces as we passed into the prairie country beyond Missouri.

But we were doomed to disappointment. The only thrill we had was the sight of an occasional herd of antelope scurrying over the plains as our train moved toward the setting sun.

My father held a position of some importance in connection with the building and operation of the old Denver and

South Park Railroad running from Denver into Leadville and penetrating the mining country.

We were taken to his modest home where my mother had prepared a warm welcome for us. My younger sister, nearer infancy, had preceded us with my mother to the West and for the first time after several years of separation our little family was united.

It was all quite different in Denver. We missed the bluff Scotch-Irish grandfather, the mansion with its great pillars and its broad expanse of acres, its coloured servants, its cattle, horses and dogs. We missed the work of herding the cows, searching for the new-born calf and its mother in the swamp jungles that skirted the river. We began to realize what a veritable paradise we had left.

We were now in the heart of a small but bustling city. We had looked forward to cowboys, Indians, buffaloes, to entertain us. But there was none at hand. Where were they, we constantly demanded.

The nearest substitute for the thrills of the old life on the farm was an outbreak of Indians in one of the Indian reservations that created great excitement throughout the state and filled the front pages of the newspapers. The closest we got to it, however, was when with the other children of our neighbourhood we trooped down to the state armoury and watched the militia mobilize preparatory to leaving for the seat of hostilities.

We were sent to the old Arapahoe school in Denver. Our life, though uneventful as compared to our earlier years, was yet not without its interesting episodes. The city was growing and I was watching its growth. And gradually I began to feel a sort of affection for my new home which steadily deepened as ambition and hope stirred within me to serve the city and make the best of my life a part of it.

This trend, however, was rather precipitately checked when a celebrated Catholic priest, Father Zahm, who had endeared himself to Denver and Colorado, convinced my father that our Christian Catholic education, so rudely interrupted when my father came to Denver, should be resumed at Notre Dame, Indiana. This school was not so well known then as now—it had a baseball team but it did not have the advantages of advertising which football later gave it.

I was then twelve years of age. Father Zahm had assembled

a sufficient number of boys from Denver homes (there were Protestants as well as Catholics among them) to justify a special Pullman car for the party.

Getting off to Notre Dame was thus a memorable event in my life. We enjoyed an excursion in and around Chicago, which I had come to believe was the greatest city in America. I had heard that it had a building twelve stories high and I was eager to see it. After we had viewed the massive structure and the miracle had been explained by our guide and preceptor, Father Zahm, we went on to South Bend and from there to Notre Dame.

There was in those days—and I presume still is—a department at Notre Dame known as the “minim department.” I was not particularly enamoured of the term because its definition was usually accompanied by a description of “minnows”—“small fish”—but we acquiesced and my brother and I, with other Denver boys, were duly enrolled in the department. Here I was to spend several of the most interesting years of my life.

The minim department was under the direction of nuns, the principal being a very fine type of Irish woman whom we called Sister Aloysius.

As I see it now, I must have been a very emotional child. I suffered greatly in my struggle to master the catechism, which, here, as in my former Church school experience at Jackson, was the important thing in the curriculum, neglect of which called for the heaviest penalties. However! the ordinary branches of study were not ignored.

The first six months at Notre Dame were the hardest, marked as they were not only by worry over my studies but by agonies of home-sickness and readjustment to my new environment.

I remember that our meals were served in the refectory of the seniors, or older boys at the university. There were not quite one hundred of us younger boys and we were divided into groups of about twenty and each group seated at one of five tables in one section of the refectory. At the head of each table sat a senior, presumably to act as big brother and counsellor during that important hour of the day.

There was silence during most of the meals when a member of the senior class, selected for his oratorical



abilities, mounted a pulpit at the side of the hall and proceeded with such dramatic fervour as he could muster to read from various books that might have a helpful and especially a pious influence on the listeners.

I remember some of these stories were thrilling, and the good priest who sat at the head table and directed our time of departure would sometimes be considerate enough to let us stay a few minutes until the crisis of some dramatic story had been reached.

One series of stories concerned the lives of the saints. They interested me profoundly. Those saints had suffered persecution. They had gone through the most horrible butcheries. They had been roasted, drawn and quartered. All for the sake of what they believed.

I remember turning to a man by the name of Stice at the head of our table.

"To stand for what you believe," I told him, "is surely a dangerous life, isn't it, Mr. Stice?"

"Oh, yes," he answered, "but that is the only kind of a life to lead."

I was not quite sure that this life of the saints was the life to live, but I was curious about it. I told Sister Aloysius about my interest and she was tremendously pleased. Almost at once she obtained *The Lives of the Saints* for me.

I was to become acquainted with them all; the saintly martyrs interesting me most—but the saintly scholars were not neglected. I had struggled to understand St. Augustine, St. Jérôme and St. Thomas Aquinas. My affection for Sister Aloysius was like that for my own mother and when she encouraged me to become acquainted with the scholars of the church my tender age was no bar to interest. A part of the encouragement I had from that saintly woman were my errands on occasions from our department to the then President of Notre Dame—Father Walsh. The envelope of demands for the minims that I carried to the President often bore some of my compositions in which she had found the pride of a teacher for a favourite pupil. Upon one such occasion I recall that quizzical smile of Father Walsh as he suggested that St. Thomas and St. Augustine might as yet be a bit too much for a small boy like me. There was Ignatius Loyola, Aloysius—and Father Walsh was sure I would like to know more about St. Francis of Assisi. And he was

right. This suggestion about St. Francis delighted Sister Aloysius. I could not get enough of St. Francis. He was so human. He not only loved people; he loved the very birds in the trees, the beasts of the field—all living things—this St. Francis of Assisi. . . .

There were off times of quiet and reading in the assembly hall of our particular department and here I was encouraged to delve into *The Lives of the Saints*. I am not sure it would not have been better for me, at that formative period, to have read about Buffalo Bill, in whom I had also been interested. (I had seen him once in Denver and when I told the students about it I at once achieved special standing among them.) I am not sure that a dime novel would not have been better for me. But, of course, all of these things were taboo.

I knew a good-natured Irish boy whom my preceptor had also sought to impress with *The Lives of the Saints* and who was almost dropped from school when she discovered that he had ditched the saints—or rather had used the volume as a camouflage behind which he skilfully concealed a corrupting dime novel of that day.

I shall never forget the sermonizing we had from our worthy preceptor over the incident, nor the fear that God, in His wrath would destroy the building if such sacrilege should again be committed in it. There was hell fire, damnation and brimstone ahead.

I confess it frightened me against the pursuit of that adventurous type of literature, and rather reconciled me, in the hope of Heaven and other rewards, to continue with *The Lives of the Saints*.

On occasions I have always struggled against a sort of morbidity that was never part of the life of my younger brother, who could not be induced to read the book on the saints but had, I suspected, committed the sacrilege that dime novels inspired.

I remember there were several of these saints at Notre Dame who—as it was explained to me—were possessed of astounding virtues.

One had mortified his flesh by always carrying pebbles in his shoes. This particular priest, being a most eloquent man, with a touch of fanaticism in his glowing periods, had impressed me greatly. I was soon trying to emulate his

example by dramatically reciting from religious services while suffering from pebbles in my boots.

Life, I reflected, was a dubious affair, with none of us knowing at what moment, perhaps before nightfall, the dreadful summons would come. But surely Heaven was ahead for me and my pebbles!

Another of these fathers, I was assured, had exorcised the Devil. He had actually spoken to Beelzebub. It all had to do with the case of a very bad man who had been "possessed." During the exorcism there first issued from the man's mouth a mass of worms. Then was heard the distinguished voice of Beelzebub refusing to be banished. But, finally, there was an explosion and a flash of fire in the midst of which Beelzebub went back into the molten fires that bubbled in a lake in the country of Lucifer and his imps inside the earth.

All this was very real to me. For wasn't the imprint of a hand still on the door of the room from which Beelzebub had fled—the imprint scotched into the wood as though from a hand of iron at red heat? Some day we might be allowed to go to this room and see the imprint for ourselves.

One good father, I remember, had been permitted to gaze through the unprotected window of a Masonic lodge into which Beelzebub with tail and cloven hoof had stalked to occupy the place of the Grand Master. The report was not to be questioned—it must be so because the good father had seen it.

I must have aspired to sainthood in those days because I was looked upon as a promising candidate for the priesthood. I will never forget the joy in my father's and mother's letters when I confided to them that I had been singled out as one whose piety promised such a future. Of course, nothing could have pleased them better.

When the great Father Sorin, the magnificent and patriotic priest from France who in the days of prairie wilderness had founded the little settlement church and school that afterward became known as Notre Dame, returned from his annual visit to France to the university to be received by the student body and faculty, I was the little angel selected to read the address of welcome.

Dressed in my best suit of clothes and supported on either side by the second and third choice for angelic honours, I

recited with all the dramatic fervour of my soul the manuscript that had been carefully prepared and properly embossed for the occasion.

I was an acolyte. I carried the cross in the solemn religious processions on feast days. Upon other great occasions, as surpliced altar boy, I uttered the responses to the prayers of the priest, my little voice ringing fervently through the great cathedral of Notre Dame. I marched in the processions of the Feast of Corpus Christi, with visions of the Lord and angelic hosts before me. I was confirmed and made my first communion. Yet on the slightest thought that I regarded as improper, even when there was no accompanying breach of conduct, I was thrown into a panic of fear lest I might receive communion in a state of sin.

And I remember on more than one occasion I went in the early Sunday morning to the quarters of the good priest to confess my imaginary sins, lest in receiving the Sacred Host in a wicked state I would be damned forever and shut off from the hosts of angels before the great white throne upon which I visioned a benign gentleman, very much like Father Sorin, who was attended on the right by the gentle Saviour and on the left—as I tried to picture it—by the Holy Ghost. (The Image of the Holy Ghost had never been made quite clear to me.)

These doubts and fears, I remember, were torturing, agonizing experiences. They often made me morbid and I would dream of Lucifer with his forked tail and cloven hoof and his lakes of fire and brimstone whence issued the wails of the lost forever and forever.

Of course, all of this was relieved by other days of ecstatic elation when I would escape from the damned and dwell beyond the pearly gates, feeling an ethereal exaltation as I floated on my wings with the myriads of the saved in the Heavenly Paradise.

There were, too, many happy mundane experiences—in days when I was a real boy. I enjoyed good physical health and I played football and baseball, went on hikes and skated during those glorious winter days on the lakes beyond the campus of Notre Dame. There were long rides out to the farm that supplied the college with food stuffs, where we could gorge on mince pies and I could again recall my childhood when I tended the cows and calves and worked in the hay fields on my grandfather's plantation.

Neither can I forget the joyous triumphs of winning a medal, perhaps for reciting one of Father Ryan's poems, especially "Erin's Flag":

*"Unfurl Erin's flag, fling its folds to the breeze—  
Let it flash o'er the land and float o'er the seas."*

My small frame would shake with emotion when I reached the point that called for denunciation of Erin's enemies and the exaltation of its heroes who had died for liberty and justice. I look back through the years and I wonder if much of what I have accomplished, as well as suffered, does not trace back to these strange experiences of my school days at Notre Dame.

The debating society at Notre Dame always interested me. I was rather proud to be looked upon as one of the "champeens" in its "grand debates."

And the grandest of all these was on the question, "Resolved that Denver is the most progressive city and Colorado the greatest state in the Union."

With Will P. McPhee and George and Ed. Costigan as my Denver colleagues on the affirmative I made my first reputation for talking too much. For I orated two solid hours in support of our contention.

The debate was a fierce affair and its reverberations were heard for many days on the campus. Of course, we Denverites always insisted that the affirmative had won—that Denver was really the most progressive city and Colorado the greatest state in the Union.

In the midst of these school activities I became vaguely conscious that all was not well at home. And then I learned that there had been a change of management on the railroad for which my father worked and that he had been thrown out of employment and was unable to meet the mounting family debts.

My grandfather, I had been told, had almost pined away after we boys had left the farm at Jackson—he would wander about disconsolately at times, demanding: "Where are those boys? When are they coming home?"

Well, we were "coming home"—that was the ready answer of my grandfather to my mother's appeal for help. We were going back to our earthly Paradise, much more substantial than the Paradise of my dreams at Notre Dame!

And yet, despite our eagerness to return to the old farm, I must say that I left Notre Dame with an abiding affection for all that it had meant to me, with a tender regard for its priests and nuns, of the sincerity and purity of whose lives I was so convinced that no one in later life could assail them without a hot defence from me, though I could no longer accept their theology.

Since my mother remained with my sister in Denver while my father struggled to regain his health and get back on his feet financially, it was but natural that my grandfather should assert parental rights over us boys at Jackson. He would not listen to our going to the parish school. He was visibly affected by my defiant defence of the saints and the faith they stood for and at times my religious convictions threatened to disrupt that *camaraderie* between age and childhood which before the days at Notre Dame had been the joy of our lives.

There was a school in Jackson maintained by the wealthy membership and influences of the Baptist church. It was known as the South-western Baptist University—a “fresh water college” with a curriculum that carried little, if any, beyond the modern high school. But there I went while my younger brother was carted off to the public school.

I soon found that the controversies into which I plunged on behalf of my heroic saints got me nowhere and gradually, still in my early teens, I must have become neutral. But I remember that once when a teacher had unexpectedly eulogized Martin Luther with a corresponding berating of the Pope, I rushed immediately and manfully to the rescue of the latter and rose to a terrific denunciation of Luther as the agent and imp of the Devil. Hadn't the Devil claimed him on one occasion and hadn't he escaped only by throwing an ink bottle at his Satanic Majesty?

Of this I was so positive that I challenged denial but I soon found myself overcome in numbers, if not in argument, since the Pope had no other champions among the Baptist fundamentalists and other progenitors of our twentieth century Ku Kluxers.

I found my solace in the debating society, the Apollonians, which furnished me an outlet for other than religious controversies.

The first grand debate in which I was to gain honour was on behalf of Gladstone and his home rule policy for Ireland.

While my precious Catholicism was not here directly involved, it no doubt added fervour to my plea for Ireland and the British premier whom I defended.

I can remember still how with such eloquence as my small frame could command I rehearsed the wrongs of the Little Green Isle and condemned the infamies of Mighty Albion with all her crimes from Ireland to India, predicting justice and freedom though the heavens fell and blood ran to the horses' bridles.

We won the debate, I recall, and I then resolved to become a lawyer because that profession seemed to me to offer opportunity to express the burning passion within me to fight for justice.

Another proud moment of my school life came when I competed for the medal for the best speaker in the Apollonians' annual oratorical contest about commencement time.

My subject was "Modern Inventors and Inventions." I praised them all—Watt, Fulton, Goodyear, Whitney, Edison and the like, and with some spark of prophecy I predicted much that the machine age has since brought to pass.

This part of my address, I remember, raised a momentary question in some quarters as to whether I was altogether sane. But in after years, Mr. Edison more than confirmed me when he told me that some day we should read on the front pages of the newspapers that some youth had harnessed radium and with perhaps as much of it as you could put on the end of your finger had run a flying machine around the world faster than the sun seems to go.

Marconi, too, justified my boyhood dreams when in an interview he told me that the greatest inventors would be boys in their teens, some of whom through the power of radio might reach the shores of a thousand worlds!

Perhaps I had imagination in those early years but if I did it met with little encouragement. And in after life my leaps into the future met with the same cold response. When bills that I wanted to propose to effect changes now quite acceptable were frowned upon, I foolishly delayed having them introduced in the legislature until years later, when they barely succeeded in being the first of their kind to become law.

I had now spent about three years at the South-western Baptist University when, my father having apparently

recovered his health and somewhat improved his business condition, my brother and I were sent back to Denver.

By this time the changes in the western country had been so great that we had little hope of seeing even the fleet antelope as our eyes strained and scanned the horizon of the plains for the thrills of the wide-open spaces.

My father's health, I soon found, was not completely restored. From time to time there were threats of serious illness which made us all very uneasy. I longed to go to the old East Denver high school which a number of my boyhood friends were now attending. But the struggle to support the family was too great to permit it. We boys went to work.

I got a job taking proofs in the local land office. It was fairly remunerative but seemed to get me nowhere. I tried for a job in a law office but that seemed impossible.

However, a lawyer to whom I applied had a brother in the real estate business who, he said, had work for me that might later lead to the realization of my desires.

I went to work for this man for \$10 a month. I learned to keep a set of abstract books. It was not long until I became aware that I was holding down a clerical job to the satisfaction of my employer and doing it on an office boy's salary.

Arriving one morning early to open the office, as I was wont to do, I was startled to find the door of the safe lying on the floor and its contents exposed. The safe had been blown, the place had been robbed! I will never forget the cross-examination at the hands of a detective who came to investigate the crime. I don't think I was listed as a suspect but, nevertheless, I passed through quite an ordeal, at times amused, at times indignant, over being put on the defensive. I was soon relieved in this regard, however, when my employer, discovering my concern, burst out in a hearty laugh.

My brother, by a lucky accident, had secured a position in a law office. He had not wanted to be a lawyer, though as an office boy he was giving his employer satisfaction.

I believe I was just short of my seventeenth year when we seriously took up the problem of swapping jobs. It seems I was not quite old enough to be a clerk but just beyond the office boy's age, within whose limit my brother still unquestionably fell.



However, I was small and could easily pass for fourteen.

At any event my earnestness must have prevailed upon Mr. R. D. Thompson, who had come from Pittsburgh and had developed into one of Denver's most respected and successful lawyers. The exchange was effected to the satisfaction of both employers and to the great joy of us two boys.

Since the main support of the family fell on us boys and our salaries as office boys were hardly equal to the demands, we supplemented our income by carrying newspapers for the *Rocky Mountain News*—the famous *Denver Post* had not then arrived—and by doing janitor work at night.

Such spare time as I had I used for study and conducting the collection agency department of the law office. I remember I used to carry law books to court and listen wide-eyed and open-mouthed to the arguments of the battling attorneys.

All this meant a work day extending often from 4 o'clock in the morning to 10 o'clock at night. We were skirting the edges of poverty and all its fears and threats assailed us. Would we lose our jobs? Would we be able to pay the rent? Where could we find a house for lower rent?

For we were now bearing the entire family burden. Father had passed away. He had suffered from convulsion and, in the midst of his apprehensions over these frightful occurrences—many a night I was awakened to hold him in bed—he had neglected to pay his life insurance premium. Death came a day after the premium had fallen due and the twenty years of devoted application through storm and stress to keep up his payments, seemingly always on his mind in his later struggles, had come to naught.

An able lawyer, afterwards elected judge, volunteered his services in a civil suit to collect the \$15,000 principal which my father had been sure would tide his family through the children's teens, but not a cent could be recovered. The generous features of insurance policies, since added to guarantee against such contingencies, were not then common.

So we faced life not only literally without a dollar but under the obligation, as I felt, to assume several hundred dollars of my father's debts as well.

In those grinding years of poverty, toil and worry, I was growing up improperly nourished and without adequate sleep and rest. I was under-sized. It may be that I was a

pure "throw-back" to that little New England grandmother, of whom I have already written, and would have been small whatever my fate in childhood. But some of my friends have attributed my lack of stature in part, at least, to the deprivations of those early years.

At any rate, they left their indelible impress upon my inner life. The sufferings of the poor have always been very real to me.

## CHAPTER II

### PREPARATION. . . .

As I look back through more than three decades of "The Dangerous Life" I sometimes wonder if unseen hands, or forces, were not pushing me back there in the beginning, imparting to those early years a direction which I then but vaguely comprehended.

The days of preparation for my chosen career at the bar stretched out, at times seemingly interminable. It was as if I were searching for light in a dark forest through whose endless trees the trail to the open country twisted and turned, and was often all but indistinguishable. My early reading of Dante came back to me: "In the midway of this mortal life, I found me in a gloomy wood astray; gone from the path direct, and e'en 'twere hard to tell how *savage wild*—that forest—"

But I persisted, with a slowly growing understanding of the work that lay before me.

In those early struggles I knew and fought despair. I learned to conquer but it was only after an almost tragic surrender whose lesson I was to remember through all the bitter years of warfare with The System that were to follow. I can recall as though it were yesterday that first hectic climax. Life, it seemed to me, was not worth living. Every one seemed to have lost faith in me. I should never succeed in the law nor in anything else. I had no brains—I should never do anything but scrub floors and run messages. And so, after a day of discouragements at the office and an evening of misery at home, I got a revolver and some cartridges and locked myself in my room. Standing before a

mirror I pointed the muzzle of the weapon to my temple and pulled the trigger. But the cartridge failed to explode! The muzzle had jabbed harmlessly at my forehead with the impact of the hammer.

In the revulsion that swept over me I dropped the revolver to the floor and threw myself on my bed. And lying there, the full measure of my folly and weakness was borne in upon me and I determined that I would go back to life and crush the circumstances that had almost crushed me.

So the office and the study of law again claimed me—an outside world that just then seethed with the passions of threatened civil war. I can again see myself on the crowded street keeping pace with my brother as he marched in his militia regiment from the Armouries to attack the City Hall. Governor Waite and the Fire and Police Board of Denver, a body appointed by him, had clashed. The board had refused to close the public gambling houses and otherwise enforce the laws against vice in Denver and he had exercised his legal right to remove them. Backed by the police, they had refused to quit and now the governor was determined to drive them out of the City Hall.

“Bloody Bridles” Waite, they called him because he had predicted in Biblical language that the reign of lawlessness, unless checked, would bring a time when “blood would flow in the land even unto the horses’ bridles.”

Was the prophecy about to come true?

There were riflemen on the towers and in the windows of the City Hall. On the roofs of the houses for blocks around there were sharpshooters and armed gamblers and other allies of the police board. Gatling guns were rushed through the streets. Cannons were trained on the City Hall. The long lines of militia were drawn up before that building. And while the Committee of Public Safety conferred in belated sessions the whole city awaited for the firing of the first shot that would start the reign of bloodshed and violence.

But it was never fired. For in the midst of the confusion and the suspense there came the sound of bugles from the direction of the railroad station and an army of federal soldiers ordered from Fort Logan by President Cleveland marched down upon the scene.

A mounted officer rode between the militia and the police and in the name of the President commanded peace. The militia withdrew, the crowds dispersed. And it was not until the Supreme Court had handed down its formal decision that Governor Waite had the right and the power to unseat the board that City Hall surrendered.

The dramatic episode made a deep impression upon me and years later I cited it as precedent when urging President Wilson to send federal troops to Colorado to stop the slaughter of women and children in the war between capital and labour, during the famous bloody strike at Ludlow.

About this time things began to look better for me in the office. My salary was raised and I was relieved of the drudgery of janitor work. I had been advanced from office boy to clerk. I applied myself seriously to my law studies. I read Blackstone, Kent, Parsons, working night and day, and I began to get some sort of "grasp of the law." A number of us boys got up a moot court, at first renting a room to meet in and finally obtaining use of a room in the old Denver University building, where in the gas light we held "quiz classes" and defended imaginary cases.

I was admitted to the bar in 1894 but under the liberal legal requirements of the time I had already been practising law for several years. My employer, Mr. Thompson, would give me demurrers to argue in court.

By a fortunate circumstance my employer had offices adjoining those of the then district attorney. I remember we had a client who had been swindled by a business man through false representations as to credit made to a well-known commercial agency.

The district attorney had prosecuted this business man on several counts in Denver's West Side Court, assigning one of the ablest deputies in his office to the case.

Because of the close relationship between my employer and the district attorney I was very much interested in the case and was in court part of the time during the prosecution.

The jury acquitted the defendant upon two counts and the able deputy decided to dismiss the third count. I believed the man was guilty and I used my little influence against dismissal. Though I was under age and not yet admitted to the bar, I asked the district attorney to let me take over the case.

He yielded. I prosecuted the man on the third count and the jury found him guilty.

In more ways than one the victory was a turning point in my struggle. It gave me confidence in myself. It taught me never to give up. But the thrill of it had hardly died out before I began to feel sorry for the convicted man. He had a wife and children who were going to suffer if he went to the penitentiary.

The next thing I knew I was trying to get him out of his predicament. I interceded with the judge, pleading passionately for the victim of my persistent activity.

But in the midst of my rushing periods I was interrupted. "Son," the judge said, "your forte will never be that of a prosecutor. You conducted your case well but it was out of your desire to win—you had not considered the penalty. And now you find that you won something you didn't want."

And then, reflecting a moment, he resumed: "I think you would be much happier defending people than convicting them."

Some time later I received word to report to his chambers. Upon my arrival at the West Side court he greeted me with a rather quizzical smile and said:

"We have a couple of burglars over here that need to be defended. It occurred to me that it might not be a bad idea for you to have a little practice on them. Your work as a prosecutor has convinced the court that they would be quite safe in your hands. I am going to assign you to their defence."

Of course, I knew with what expectancy some of the younger members of the bar looked forward to assignments of this kind. The fee provided by the county was small but the opportunity afforded to make a showing proved such a stimulus to these younger members that their clients often received a better defence than if experienced lawyers had been employed. I should have been pleased to have one burglar to defend. I wondered by what good fortune I had been assigned two!

In thanking my benefactor I made some comment on this circumstance which was met with a whimsical smile.

The clerk gave me the numbers of the cases. I got the pleadings and went into the old West Side jail to see my clients. The Warden smiled when I told him their names.

I followed him through clanging iron doors with their rattling bolts and bars to the back part of the building.

At the end of a corridor I came in front of a cage on the floor of which were two small boys engaged in gambling with two grown men who had been brought in from some outlying section of Arapahoe county, a sparsely settled empire that then ran clear to the eastern state line.

I found that these boys had already been in jail more than sixty days and had learned to play poker from their older cell mates, a safe cracker and a horse thief, upon whom they had come to look as great heroes.

My first thought was that the judge in assigning me to defend two such men from serious crimes had given me a pretty tough job but my concern was soon relieved as the Warden explained:

"It's the kids the judge wants you to look after. He was over here the other day and he didn't like it very much that they're still here. He said he knew a young fellow who was just the one to look after the case. I guess it must be you."

"Then," I asked, to make doubly sure, "it's not those two men who are my clients?"

"No," he drawled. "Those guys have got two real lawyers to defend 'em."

"But," I persisted, "I am appointed to defend two burglars."

The kids looked like such real boys that in my confusion I had been unable to visualise them as criminals—my mind just refused to work that way.

"Sure you are," said the Warden, "but them's the burglars."

A number of things shot through my mind as this first step in my difficulties cleared up. One was that it, perhaps, took "two burglars" like these boys to make "one burglar." And so my pride that had soared from the flattery of two assignments when any young fellow would have been tickled to death with one, was a bit humbled.

My first task—that was afterward to become my task in so many thousands of cases that I then little knew were to follow—was to get acquainted with the prisoners. It was my first appearance before the bench of youth but its lesson was to stay with me even in the days when I had long ceased to

be a lawyer and had become a judge. For there by those bars that would have shamed the King Tiger of the Jungle I was able to begin a lasting friendship with the little prisoners.

They were typical boys from the realm of Gangville, as I was to come to know it so well. They were about twelve years of age.

The one that impressed me most was a little freckle-faced Irish lad with a sense of humour. He was charged with having gone into a railroad section house and taken a lot of tools.

"Sonny," I said, "you are charged with burglary."

"I ain't no burglary," he countered.

"I guess you don't know what burglary means," I ventured. And I explained to him that the long rigmarole in the complaint papers meant to charge him with breaking and entering a tool house and THAT constituted burglary.

"I never stole 'em, I just took 'em," he answered heatedly. "So I ain't done no burglary—I ain't done nothin'."

"Well, one thing you can't deny," I went on, getting chummy with my client. "You've got the dirtiest face I ever saw on a kid."

"Tain't my fault," he shot back with a grin. "A guy threw water on me and the dust settled on it."

When I protested to the Warden against this good-natured boy being held in jail with two hardened old criminals, he admitted it was "a damned outrage."

"How many boys are there in jail?" I asked.

"Oh, quite a number," he answered. "Most of them don't stay so long as these two boys—they're waiting for the fall term of court. Their families couldn't afford to put up bonds."

"But why do you put them in with that horse thief and safe cracker?"

"The jail is crowded," he said. And he gave various other excuses.

Well, in answering the charge against those kids, I did a thing that was perhaps purely artless, the direct reaction from my rage complexes, my indignation at injustice.

I prepared an answer that was an indictment against the state of Colorado for its crime against those two boys. The thing got a lot of public discussion and raised quite a furor.

Here were two boys, neither of them serious enemies of society, who were about to be convicted of burglary and have felony records standing against them for the remainder of

their lives. And, pending the decision of their cases, they were associating generally with criminals and particularly with a horse thief and a safe cracker. The state was sending them to a school for crime—deliberately teaching them to be horse thieves and safe crackers. It was outrageous—and absurd.

My first fight then was with the state of Colorado. I was determined that those boys should have their chance. I saw only vaguely then what afterwards became clearer to me—that my first fight with the state was not just for those two boys but for millions like them. Even then, however—before I had formulated any plan to change the things that were or had written any of the hundreds of laws I afterward wrote for my own and other states and foreign countries—I had made up my mind to smash the system that meant so much injustice to youth.

Although I did not know it, I was well on the road to "The Dangerous Life", with its sorrow and disappointment, and its satisfaction in achievements marred by the consciousness of a goal never fully reached.

How little the judge knew the real size of that first little case to which, in a whimsical moment, he had assigned me!

I went back to him. I talked and he listened. I found him in a measure sympathetic, though he did not fully share my indignation over the situation and warned me against taking it too seriously.

However, he gave me to understand that he would not be bound too much by rule and rote, technicality and precedent, but would co-operate with me as far as he could to do what was "best for the boys" even though, according to the conventions of that time, it might not seem to be the "best for the state." (Of course, I was to know in time that, when properly understood, whatever is "best for the child" is really "best for the state.")

He was not just sure that he had authority to do what he thought he ought to do. But he finally agreed I might continue the case from time to time, that we might spare these boys from the blight of conviction for felony and its drag and handicap in after years—provided I would look after them in the meantime.

And, of course, I agreed to that.

I became the Juvenile Judge and Probation Officer.



Such was my first juvenile case.

About that time, too, a murder case that deeply impressed me was tried before one of our district judges. As a law student I attended the trial and followed it with intensity. The accused, a ten-year-old boy, lived in the country with his father and mother on their little farm.

The family was very poor.

One bitter-cold winter day two young men from the city were hunting in the vicinity of this ranch. In their quest for game they came upon this boy, who was also hunting.

One of the men followed the boy, engaging him in conversation as to the whereabouts of game. In the course of the conversation—as the boy told me after the murder trial—the man showed him a gold watch. While he did not tell the boy he could have the watch, he got him very much interested in it and thus gained his good graces as a guide.

The boy also told me that in their course through the bushes skirting the bed of an old lake or swamp the man had stopped to take a drink from a hip-pocket flask. The boy, showing interest, was offered a drink. In the freezing wind he eagerly accepted.

He told me that as the man preceded him, his brain suddenly seemed to flame with visions of the watch and himself its happy possessor. The next thing he knew his gun had exploded and the hunter just in front of him fell with a scream.

Dazed for a moment after the first onslaught of fear, the boy bent over the man and found he was dead. He was filled with confusion as to how it all had happened, he contended, and was about to flee in terror when a flash of sunshine on the gold chain that held the man's watch attracted his attention.

Involuntarily, he took the watch from the dead body, smuggled it in his pocket and dashed for his home.

By the time he arrived there he had become sufficiently sobered to realize something of the tragic character of his experience—which, of course, prompted him to conceal it. Fearing to tell his parents, he evaded them and took refuge under a bed.

When the second hunter finally missed his companion he made a search and found the dead body. He knew the boy

had accompanied the hunter through the fields and so the boy's discovery and arrest quickly followed.

Of course, the boy's story was flouted by the district attorney, except as to that part that connected him with the killing as a wilful murderer. The boy was tried before a district court judge in a criminal proceeding for murder found guilty, and sentenced to the penitentiary for life.

Thus was the vengeance of the state served and a second tragedy cruelly and needlessly added unto the first.

### CHAPTER III

## POLITICS AND—DISILLUSIONMENT

I WAS a Democrat, proud of the ideals of Jefferson and Jackson.

The Democratic party, as I interpreted our national history, was the party of the people. In great national crisis it had served the people magnificently.

I would make it serve again.

I was young and very naïve. Under inspired and intelligent leadership the party, of course, would resume its historic rôle. It would fight the enemies of the people. And the people would respond. With their votes they would place the Democratic party in power wherever the issue had been clearly raised.

It was all quite simple.

But I did not know how deeply the corporate interests, fattening on special privileges and needing government to keep these privileges, were entrenched in government. I did not know the tremendous power they wielded in the industrial, financial and political world.

More—I did not know that my own party—the party of Jefferson and Jackson—was not free; that it, like its sham opponent, the Republican party, was owned and controlled by the privilege seekers.

As an ardent idealist, I still believed in the school text books. Hadn't these text books told us all about the fine "balance of power" in our governmental scheme? Wasn't this power carefully apportioned under the federal and state

constitutions among the three branches, the legislative, executive and judicial? And didn't the people themselves confer all of this power?

After all, I need not apologize for my youthful lack of insight, when so few of our great popular leaders have seen the real truth or dared to admit it. It was only in the later life of my friend, Theodore Roosevelt, a great statesman and certainly one of the most astute of our politicians, that he really began to understand the nature of "politics."

One evening when I was at his home at Sagamore Hill, I remember, he read with great delight to members of his family from *The Beast and the Jungle*, a book which I had written in collaboration with Harvey J. O'Higgins explaining my battles with privilege in Denver.

In the discussion that followed he told me that the book had left him with a much clearer vision as to who the real rulers of our government generally were. He said that as a young man in politics in New York City, later as Governor of New York, and finally as President of the United States, he had at first failed to grasp the full truth of these matters.

"Lindsey," he said seriously, "I really wish I had understood it then as I do now. For if I had I would not now have to apologize for some of the men I put on the federal judiciary who strengthened immeasurably the power of the crooked interests."

And then smiling that characteristic quick smile he champed his teeth, rammed his hand down on the table and exploded in staccato-like rasp:

"By George, but they did put it over on me! They would come to me, those eminently respectable members of the bar, to recommend a candidate for some federal judgeship, and how they would talk about his ability and his great standing as a practitioner and of what a tremendous sacrifice he would be making in giving up his large practice to serve the people!

"And I would fall into their trap and it wouldn't be long before I discovered that these special interests had got another pet of theirs on the federal bench to give the people the worst of it in some struggle over their franchises or other privileges.

"Why"—he screamed—"I remember on one occasion when I was unexpectedly called upon to meet one of these

venal crooks, my self-respect so revolted that, by George, I wouldn't speak to him—the dirty scoundrel!”

Far be it from me to infer from this conversation with Col. Roosevelt that he placed all federal judges in the category of “crooks”—for he did not. But, in his later years, as I know from our confidential exchanges, he entertained a lively suspicion regarding a number of them and he did not hesitate to tell me who some of the suspects were. . . .

Whatever the ignorance with which I started my career, I was soon to receive a “liberal education” as to what made the political wheels go round. For early in my practice of law my interest in the poor and the children of the poor thrust me into sharp conflict with the forces that dominated government.

Not long after I had resigned my clerkship in Mr. R. D. Thompson's law office and had gone into partnership with another young lawyer, whom I shall call Charles Gardener,<sup>1</sup> I received my first lesson.

A lad named Smith who had been the victim of malpractice at the hands of a Denver surgeon had come to us for help. The boy had suffered a fracture of the thigh-bone and the surgeon had treated him for a bruised hip. When I told the surgeon that the boy was entitled to damages, he called me a blackmailer. I forced the case to trial.

Now it so happened that the surgeon had a brother who was at the head of one of Denver's great smelter companies. And when the case, one of the first my partner and I had ever tried, was called, we found ourselves opposed by Charles J. Hughes, Jr., the ablest corporation lawyer in the state.

While a motion for dismissal was being argued, I noticed the officers of certain utility companies and a crowd of prominent business men in attendance. I wondered why.

The motion was denied and for that the judge—as he afterward told me—was “cut” in his club by the gentlemen whose presence in the court room had puzzled me.

We worked night and day on that case over our X-ray photographs, medical testimony and even fractured bones, boiled out over night in the medical school where I prepared them.

<sup>1</sup> A fictitious name. I disguise my partner's identity here, as I did in *The Beast and the Jungle*, out of sentiment for “old times.”

The trial lasted three weeks.

The jury stood eleven to one in our favour.

The case was tried again. The jury "hung" a second time.

We did not give up. We knew we were right and were confident we could win. Besides, it had all been fun. The town was watching us—"two kids fighting the corporation heavyweights."

One night A. M. Stevenson—"Big Steve"—politician and attorney for the Denver City Tramway Company, projected himself upon the scene, as we sat in our dingy little office on Champa Street.

He sat down good-humouredly, a cigarette in his heavy-fowled red face. Informally he threw a foot upon our desk. He jollied us about our "making a record" for ourselves in the case.

"Ain't you getting about tired of it?" he asked.

"We got eleven to one each time," I said. "We'll win yet."

And Big Steve laughed.

"You ain't going to get a verdict in this case," he said.

"Why?" we asked.

"Jury'll hang. Every time. Better settle it."

We refused to settle. We would never give up. What was the use of courts of law if we couldn't get justice for this crippled boy?

The upshot of it was that they went to our boy client and persuaded him to give up.

We were defeated and through no fault of our own. The fault, as we counselled over the matter, appeared to be in the law which required a unanimous verdict in civil cases and thus afforded the "corporations" opportunity to "hang" the jury.

Very well, we would change the law so that nine of the twelve jurors could render a verdict. What we needed in these civil cases was a "three fourths jury law."

There were other changes in the laws which our budding practice indicated were needed in the interest of ordinary humanity. One of these would make it impossible for employers to hide behind the ancient defence of the negligence of a "fellow-servant" when their employees were injured by defective machinery. It was a "doctrine" contributing much injustice to the workers and the poor.

We had prosecuted the case of a twenty-one-year-old youth who had been frightfully mutilated by a bursting emery wheel, who suffered outrageous injustice because of this "fellow-servant" doctrine that put the burdens of responsibility on an innocent, helpless worker that should have been a part of the employer's responsibility.

I was eager to draft the necessary Bills. Why shouldn't Gardener be elected to the legislature and introduce them? He was a popular young man, a hail-fellow-well-met, a good "mixer," a member of several fraternal orders—in short, just a type to go into "politics."

We formulated our first political campaign.

In *The Beast and the Jungle* I told in some detail what happened to our "three fourths jury" Bill—and to Gardener. It is a typically drab story of drab American politics and I would not repeat it here, even in abbreviated form, but for the fact that it throws a flood of light on the sources of political power and presents a realistic picture of "government" quite different from the picture in the text books. And, I might add, it aptly illustrates my general theme, *The Dangerous Life*.

It was in the year 1897. I was only about twenty-seven years old and my partner, Gardener, three years younger. But, thanks to Gardener's connections with the business and fraternal world and to his persistent "mixing," our law office was fairly busy. We had created quite a stir in the city with our legal battles with the "corporation heavy-weights" in the case against the surgeon, and in our fight to collect damages for the young factory worker who had been injured by a bursting emery wheel. We had, too, battled spectacularly but futilely with the tramway company on behalf of a mother whose child had been killed by a street car.

Gardener was a "Silver Republican": I, a Democrat.

It was in the days of the party convention, in which presumably the power of nomination rested with the party delegates. But Gardener, at least, had no illusions about that institution. When I suggested that as a preliminary to his obtaining the nomination to the legislature we ought to canvas the delegates, he brushed me aside with good-natured impatience.

"What's the use of talking to these small fry?" he said. "If we can get the big fellows, we've got the rest. They

do what the big ones tell them and won't do anything they aren't told."

So we centred our attentions upon the "big fellows"—and particularly upon one of them, George Graham, "Silver Republican" boss.

To-day, with my eyes wide open as to The System's operations, and the part the boss plays in them, I can still feel the surge of my old affection for Graham. Everybody admired him, everybody was fond of him. He was a good man at home—"kind to his family"—and he was charitable in the community. At Christmas time as chairman of the proper committee he distributed baskets of food to the poor. Prominent in the fraternal orders, he used his political power to help the needy, the widow, and the orphan.

Personally he was magnetic. He was of pleasant appearance, smooth and dark of complexion with a gentle way of smiling, and he took a kindly interest in aspiring young men.

Well, he liked us—so much seemed plain as we came closer to him in developing our plans for Gardener's nomination to the legislature. He used to drop in at our office, call us by our first names. And Gardener would come back from a chat with him, full of "inside information" about the party's plans as to who was to be nominated for this and that office at the coming convention. Handsome, well-built, always well-dressed, self-assured and ambitious, Gardener had been found worthy of the confidence of those in power. I was very proud of him.

Before the convention met in September, 1898, Gardener had decided that he was going to the senate and not the lower house of the legislature.

"I'll tell Graham and Big Steve (another boss) it's the senate or nothing for me," he announced with easy audacity.

And Graham surrendered.

Silver Republicans, Democrats and Populists had fused that year and the political offices had been apportioned among the loyal machine men of these parties.

Gardener was nominated by "Big Steve," lobbyist and attorney for the Denver City Tramway Company, in a glowing eulogy and the convention ratified it unanimously.

I went to work on my Bills with all the pathetic confidence of youth.

Strange things began to happen. The party committee had assessed Gardener \$500 as his share of the legitimate costs of the election. Boss Graham offered to get the money "from friends." A similar proposal came from Ed Chase, later head of the gamblers' syndicate in Denver. We demurred as graciously as we could. We split the assessment between us and paid it.

In November, 1898, Gardener was elected state senator on the fusion issue.

I drafted our "three fourths jury" Bill. In my study I had found that the constitution of Colorado preserved inviolate the right of jury trial in criminal cases only. Jury trial in civil suits, it was therefore clear, was subject to regulation by the legislature. I was on safe ground and elated. "Hung juries," through which the corporations had worked their injustices on the poor, would soon be things of the past in Colorado.

Having in mind the mother whose child had been killed by a street car, I drew up a bill allowing parents to recover damages for "anguish of mind" in such circumstances.

I worked up an "employer's liability" Bill.

And joyfully I entrusted the fruits of my labours to Senator Gardener.

After preliminary skirmishing at the Capitol and taking heed of the warning of Boss Graham against scattering our efforts we decided to concentrate on the "three fourths jury" Bill.

No paid tool of the interests ever worked with more deadly earnestness than I did in my new rôle as volunteer "lobbyist" for the people.

Since Graham seemed to doubt the constitutionality of our major measure, I conferred with the attorney general. He referred me to his assistant—whom I convinced.

With the assistant's decision, Gardener introduced it in the senate. But the senate was afraid of it—in a preliminary debate it was condemned by the members as "visionary" and "unconstitutional." Finally, it was referred to the attorney general for an opinion.

We were sure we had won. Imagine, then, our surprise, when that high official reported it unconstitutional and the very assistant who had approved the bill now joined in opposition to it.



But we were not yet beaten. Gardener fought successfully to have it referred to the supreme court, under the law. I prepared an exhaustive brief, which we had printed at our own expense. I spent a day arguing it before the supreme court judges. And we won.

With the court's decision that the bill was constitutional, Gardener got it favourably reported out of the senate judiciary committee.

Protests came from Boss Graham, now thoroughly alarmed. "The bill, he said, was distasteful to him and his "friends"—particularly, to the Denver City Tramway Company. If we would drop it, the city railway company would see to it that we got at least \$4,000 worth of litigation a year to handle.

We turned him down.

Gardener was fighting magnificently—I shall never forget how proud I was of him in the debate that followed final reading of the measure in the senate. Bold and determined, he loomed upon the senate floor a fine figure of an orator, spreading confusion into the enemy's ranks.

Any senator who opposed his bill, he belligerently announced, could count on him as an obstinate opponent on every other measure.

The bill was passed but it still had to go through the lower house.

Again Boss Graham intervened. One day as I was passing through the Capitol corridor he called me into a side room and shut the door.

"Did you boys ever stop to think what a boat you'll be in with this law if you ever have to defend a corporation in a jury suit?" he asked.

And then came this offer:

"They"—the tramway company—"are going to need a lot more legal help. There's every prospect that they'll appoint you boys assistant counsel. . . ."

Gardener and I laughed over the incident. It was additional proof that we had our opponents whipped. We knew that Graham was intimate with William G. Evans—the great "Bill" Evans—the real boss—head of the tramway (city railroad) company and it was natural that Graham should try to get us to spare his friends. But we had made

no pledges, WE were under obligation only to the public which we had chosen to serve.

In the lower house I kept a dogged watch on our "three fourths jury" Bill. More than once it came to the top of the calendar but was passed over. Once it disappeared altogether and when I demanded an explanation from the clerk of the house, he said it was an oversight, a clerical error, and he put it at the foot again.

Finally it was referred back to the judiciary committee with two other anti-corporation bills.

The session was drawing towards a close and it seemed certain the Bill was being juggled out of its last chance by the clerk and the speaker, later a tax agent in the railway company's offices.

Gardener struck back. He sought out the speaker of the house.

"Not one of your house bills," he told the speaker, "will get through the senate until our jury bill comes to a vote."

The next day he went into action. And that afternoon, during the house recess, I was to learn, unexpectedly, how effective his blows were.

As I was resting in a chair in a shadowed corner of the Capitol, the speaker hurried by, and rang a nearby telephone.

"Mr. Evans," I heard him say, but as I was listening sleepily I did not at first connect the name with William G. Evans of the tramway company. I awoke with an electric shock, however, when a little later these words fell on my ears:

"Well, unless Gardener can be pulled off, we'll have to let that three fourths bill out. He's raising Hell with a lot of our measures over in the senate . . . What? . . . Yes . . . Well, get at it pretty quick."

When the speaker came lumbering back, he saw and recognized me. His big jaw dropped in surprise and then, his expression changing to angry contempt, he lowered his head and passed on. I hurried to Gardener. Before the speaker resumed the house chair Gardener found him in the lobby and renewed his threats of opposition to every house bill in the senate if the jury bill were not allowed to come to a vote.

It was a tempestuous conference full of bluster, but with Gardener out-manceuvring his antagonist.

The bill was allowed to come up and it was passed with little opposition, the speaker and other enemies voting for it as part of the camouflage of covering up their tracks.

But it was not yet signed by the speaker—as it had to be before the end of the session in order to become a law. Rumours were going around that the chief clerk was going to “lose” some of the anti-corporation bills so that they could not be signed. And so I watched our bill.

When the measures waiting for the speaker’s signature were placed on the chief clerk’s desk I bided my time. While the house was busy, I withdrew it from the pile and placed it to one side, conspicuously, so that I could see it from a distance.

Now this particular clerk was a stupid-looking, flabby creature whom no one would suspect of anything daring but—when the time for signing came—he was missing, and with him some of the bills.

Immediately the house and crowded galleries were in an uproar. Every member who had introduced an anti-corporation bill, of course, thought—in the absence of definite information—that his own particular measure was lost. The hectic atmosphere was filled with denunciations of the speaker, the clerk, and everybody else suspected of connection with the affair. Men threatened each other with violence, cursing and shaking their fists.

And while the speaker sat down helpless, after futilely wielding his hammer, I saw from my place by the wall a senator—Bucklin, by name—dragging the half-drunk and terror-stricken clerk by the collar down the aisle. The clerk had stolen the senator’s bill providing that cities could own their own water and gas, electric light and power works but he had not escaped the eagle eye of the senator’s wife. She had followed him to the basement and there blocked his escape to the street until her husband arrived.

And so with a blackened eye and a bleeding face the clerk was forced back into his chair, the house got down to business again, and our jury bill, among others, was safely signed.

We had won—two “boys,” as they called us, had won and without the help of a line from the public press. What might we not accomplish with the backing that an aroused community would surely give us?

As I walked to my home in the beauty of that starlit spring night, I looked forward confidently into the future. I felt sure all was right with the world.

It was not until some months afterwards that the truth became clear to us. For we had not won at all—notwithstanding the passing of our bill by the legislature and the governor's duly affixed signature.

For the supreme court, without any apologies for its previous decisions, declared it unconstitutional on an appeal from a damage suit.

I was learning who held the reins of power in our "democracy." Out of my own struggles I was coming to know how inadequate and false were the theories and explanations of the text books. The process of disillusionment was on.

But, strangely enough, it did not dishearten me. On the contrary, the facts as I came to know them constituted a never-ending challenge to me.

If only I could say as much for Gardener! If only he could have gone on with me, sharing the adventures, the defeats and triumphs of "The Dangerous Life!" At the end of thirty years of battle he might not be rated a millionaire, as he is to-day; he might not be a frequent honoured guest at the social functions of the secret fraternities, conventional clubs and the powerful; but I am firm in the faith that other compensations, of more lasting value, would have been numbered among his priceless possessions.

The cruellest disclosure to me in the fight for the three fourths jury law was not the fact that a supreme court, sitting aloof from the people and taking its orders, directly or indirectly, from the public utility corporations, could casually nullify the will of the people. It was the fact that so talented and brilliant a young attorney as Gardener could so easily be turned aside by the blandishments and threats of the powerful from a public career that might have made a genuine contribution to human progress.

For, after some months of indecision, Gardener surrendered to Boss Graham and the influences behind him.

Graham made it plain to Gardener that if he kept on with his belligerent tactics, he would not longer have the support, in his political career, of the Republican machine in Denver.

It was all made very plain to him. Elections cost money; Money came from those able to subscribe it. The Republican

machine could not afford to offend such liberal contributors as Mr. Evans, of the tramway company, Mr. Field, of the telephone company, Mr. Cheeseman of the water company, and the rest of the "Powers."

Gardener had one more session to serve in the senate. After that, as he saw it, he would be blotted out politically unless he made his peace with Boss Graham. He could not appeal from the boss to the convention, for in those days the convention belonged to the boss. And the people were not to be considered, for they had turned over their political powers to the convention.

I saw no prospect of succeeding but my inclination was to fight—fight for the joy of it if for no other reason. We had our law practice and were not dependent upon politics for our living. We could keep reform our hobby and our recreation for our afterhours.

But this programme made no appeal to Gardener.

There began between us a continuous clash of view-points that in the end could mean only dissolution of our law partnership.

Boss Graham had brought to our office a case from the Denver City Tramway Company. One of its streetcar conductors had been charged with assault and we were to defend him. When the trial came on, it was given considerable publicity. An evening newspaper was conducting a bitter campaign against the company, and we, as its attorneys, shared in the abuse.

I did not like it.

"Don't worry," Graham said. "They're just black-mailers—trying to hold up the company."

"But," I protested, "they'll prejudice the jury against us."

"Don't worry," he said. "We can't lose. The jury'll hang."

This was even less to my taste. We were actually being compelled to profit by the jury fixing which we had so strenuously fought in our campaign for the three fourths jury bill.

Gardener's prediction came true—the jury *did* hang. And the tramway company paid us \$500 for our work.

The amount was more than we had charged for similar cases and I told Graham it was too much. But I accepted, for the time, his lame explanation that we had defeated a

damage suit that would have taken "a lot of time" of one of their "leading counsel."

Besides I was easing my conscience with the thought that if our jury law, which was then to be tested before the supreme court in an appeal from a damage suit, were declared unconstitutional Gardener would propose at the next session of the legislature a constitutional amendment permitting the passage of our law.

"If we're going to fight these people," said the plausible Gardener, "we've got to have money. We've got to take every cent we can get. . . . You're not practical. Leave the business end to me."

Dangerous strategy, as I have come to learn through the years. How often I have heard it propounded by men and institutions too eager for power! How often I have seen these same men and institutions slain by the weapons they intended to use against the enemy. Great churches setting out on some programme of social reform, universities and schools looking for endowments and accepting and "consecrating" the gifts of the world's exploiters—how far do they get on their programme? . . . But I return to Gardener.

Another corporation politician sent us a case to defend "Jim" Marshall, a well-known gambler. It involved a dispute about the lease of a gambling house. The city was supposed, at the time, to be "shut down tight" but that was only a political ruse, Marshall assured me. It was "on the cards" to open up again soon and Marshall wanted his house in readiness. I learned to like Marshall. I found him good-hearted and fearless and I believe that but for the system by which he profited and lived he might have been invaluable to the community.

We won Marshall's case and he sent us a fee of \$1,000.

Other corporations' cases were bringing us what—to me—seemed large fees. Gardener was jubilant. I was becoming more and more uneasy. We were not being paid—we were being bought! We were being linked into the system as have hundreds of other young men before and since.

As I discussed these matters with my partner in our spare moments on the front porch of his little home or walking on the streets in the evening I found him becoming increasingly cynical.

I was impractical, as he put it.

Over and over again he would state the case for compromise—or worse, abject surrender! I can remember still the tenor of his argument:

"You know, Ben, how things are in this town. We can't get a look-in on anything if these big fellows don't want to let us. . . . Look at Graham. They own him and you know it. And he has to say whether I'm ever to get another election to anything.

"Look at the courts. Those judges get their places through Graham, the same as I do.

"Look at the hung juries. You don't suppose they have to *buy* those juries, do you? The poor old dubs who wait around, up there, for a job on jury duty know who's who in this town. . . . They hang the jury in the hope that some of the big fellows will notice them and give them a job or a soft thing up at the court house or the Capitol. . . .

"We're trying to buck up against the whole game. And what for? For the people! The dear people! To Hell with them. A good half of them are in this game themselves. *They* won't help us. . . . They'll turn on us quick as a cur. . . . And the other half doesn't know and doesn't want to know. *They* don't care. . . ."

And then Gardener would wind up by saying that the thing for us to do was to "play the game for a while"—"wait until we're Somebody" and then "show these fellows where we're at."

He was slipping—slipping inevitably from me.

As I look back to-day, I am inclined to be charitable with him. He wanted tremendously—wealth and power in politics. And neither wealth nor political power made an appeal to me. I was, I suppose, a "sport"—a decided break-away in form—in the practical world. I was already interested in "justice," an absurd abstraction that meant nothing to Gardener and his kind—justice for "kids," justice for over-worked men and women and for human beings generally.

And Gardener was aggressive and determined to get what he was after.

I knew the break was coming but, so great was my affection for him, I evaded it for days. However, it could not go on for long. For Gardener was accepting my silence as consent to the use of our firm in the service of "the interests."

He was making a "tool" out of me and *that* I could not and would not be.

And so it happened that late one day I stood at my office window watching the sun go down with a gorgeous play of colour over the western mountain peaks while Gardener's words were ringing in my ears:

"Let them say what they will. Let them call me a tool. I don't care. I'm going to play the game and play it to win. And there's only one way to do it, and that's to sit in with them!"

My only answer was that I would share with him in no more corporation fees.

It was the end. Although we retained our nominal partnership for some time thereafter, from then on we went our separate ways.

#### CHAPTER IV

### ON THE WAY TO THE JUVENILE COURT

NATIONAL history was in the making and the state of Colorado was playing an important part. The free silver agitation of the early 'nineties was on, with the whole West in revolt against the gold standard.

Locally, the Republicans were in bad, because the Republicans in the East were for the gold standard. That gave the local Democrats, with the help of the Populists and the "Free Silver" Republicans, their chance. In 1898 they elected Charles S. Thomas, a Democrat, Governor of Colorado.

As a Democrat I had been active in this political upheaval and I was regarded in some quarters, at least, as a young man with a public career ahead of him. I had, moreover, acted as an attorney for the Democratic party in election cases growing out of these political conflicts.

These factors, I think—together with my publicly demonstrated interest in childhood—were responsible for my appointment as public administrator by Governor Thomas about January, 1899.

This county office, the first of a political character to be held by me, was at that time considered of no great importance.



It carried no definite salary and was not sought after by the ordinary politicians.

The work it called for was that of a public guardian of orphan children and other dependants and of the estates of deceased persons in connection with which no competent relatives appeared to perform such services.

It brought me an invaluable experience out of which I later developed a new application of the old chancery court practice in my work in the Juvenile and Family Relations Court of Denver.

In fact, as I view it to-day, my appointment by former Governor and U. S. Senator Charles S. Thomas, as public administrator, marked the official beginning of the rôle I have been privileged to play in the world-wide movement for the advancement of child welfare.

But we must not get ahead of our story.

When that great orator and popular leader, William Jennings Bryan, flashed a second time across the political horizon, in 1900, I thought I saw the birth of real democracy in the Democratic party.

There was to arise, at last, a great nation-wide organization that was to give battle to the corrupt and corporation-ridden Republican machine in the obscurest corners of America.

It was a great day of hope. Youth and idealism seemed to be in the ascendancy.

Locally, I was eager to do everything I could to purge our party of all uncleanness that we might "raise a standard to which the wise and the honest might repair." Under such a standard, backed by the power of the people, we could elect an honest legislature and pass the anti-corporation laws that the community needed.

Our first task was to rid the organization of "Tom" Maloney, then the Democratic boss, reputed to be in the pay of the gas and electric power company. The fight against Maloney was led by Governor Thomas and Robert W. Speer, popularly known as Boss Speer. Speer was then president of the Fire and Police Board of Denver and was already recognized as an astute politician, very smooth and very powerful.

In the battle between the Maloney and Speer factions I rather distinguished myself as a precinct committeeman

by getting out the vote through a persistent house-to-house canvass. I was elected a Speer delegate to the local convention and I helped to pick candidates for the legislature who would cast their votes for Governor Thomas as United States Senator.

I became chairman of the Credentials Committee of the Democratic County Convention and was made secretary of the delegation to the state convention.

In my position of prominence and influence I was able to get a near view of political obliquity and I found more of it than I expected in our party.

I objected, I remember, to the candidature of a very corrupt and dissolute man for a place on our ticket and one of the politicians replied: "Oh, you can elect any kind of a yellow dog as long as you have a 'nice man' at the head of the ticket. They'll vote it straight. Don't worry about that."

"Practical politics"—there seemed to be about as much of it in the faction with which I was allied as in the opposing faction.

The members of our factions, I remember, had passed through real dangers together—at the local convention in the Opera House there had almost been a riot in which revolvers had been drawn and we had carried on with our lives in our hands. These experiences had made my companions very friendly to me and they suggested that I look for something from the party for the work I had done. They pointed out that I might become a candidate for the office of district attorney.

For a time the suggestion had its lure for me. In my youthful inexperience I still believed that corruption in office could be checked if the guardians of the law would only do their duty. I could see myself as public prosecutor spreading terror among the grafters and enemies of the people.

Boss Speer, however, told me that the district attorneyship had already been promised to Harry A. Lindsley. Lindsley's name on the ticket, it was said, would insure a large campaign contribution from one of Denver's public utility corporations.

I had no such support to offer and I dropped the matter.

But Gardener, with whom I was still in nominal partnership, would not give in.

"Make a fight," he counselled. "I'll help. The thing isn't settled yet. It can't be. I'll help."

I was due for further disillusionment. For in a few days Gardener brought to our office Ed Chase, political ally of the local utility corporations, millionaire owner of gambling houses which he had conducted for years in Denver under both political parties—Chase, later one of the heads of the city's gambling "trust."

Chase, I knew, was a friend of Boss Speer, a contributor to our campaign fund and therefore a man who would have something to say about our party nominees.

As he listened silently to the banter with which Gardener disguised his serious proposal, this gambler looked the picture of propriety. With his carefully combed grey hair, his conventional moustache and his dignified mien, he might have been taken for the owner of a successful dry-goods store who was a deacon of his church.

Chase was particularly interested in the district attorney's office, Gardener explained, because of the crusade which the "reformers" had been making against gambling.

Chase, Gardener went on smilingly, did not expect wholly to escape prosecution. He understood that his men would be occasionally haled into court and fined but he would not "resent" such grandstand plays. Oh, no, Chase didn't want anything but what was fair—he didn't expect "to run wide open all the time." He was willing to "pay up" whenever the district attorney had to make a "demonstration."

When Gardener appealed to him for corroboration, the big gambler would smile half-reluctantly, stroke his moustache, rub his chin and nod in embarrassed fashion. And Gardener would go on:

"Gambling, you know, can't be stopped as long as men want to gamble—you can handle the thing in a practical way. And you won't have to be afraid of offending your friends."

I tried hard not to show my revulsion. I replied that my nomination had not been settled upon and that I had not even made up my own mind. At the first opportunity I backed out of the interview as quietly as I could.

Chase had hardly left our offices before Gardener was back in my room. And in his enthusiasm his guard was completely down. Here was his programme:

I was to be made district attorney. He would be counsel for the gamblers. I could gain credit with the community for prosecuting the gamblers—for "enforcing the law." But, through my handling things in a "practical way," we could clean up \$25,000 a year—outside my salary.

No, I was sure now I did not want to be district attorney!

Did I argue with Gardener? I did not. With men like Gardener, I was finding, I would have been given credit for being either a hypocrite or an impractical "goody-goody" who had no business in politics. And I still wanted to stay "in politics," for my own programme of political reforms was looming larger and larger in my mind.

So I simply told Gardener that I was *not* district attorney and had no prospect of being. Sick at heart, I got away from him and tried to dismiss the matter from my mind. One thing was certain—even the nominal partnership with Gardener must end.

A few days later I met Boss Speer and he said:

"Ben, you have got some strong backing for district attorney. Chase has been up to see me. He says he's for you."

I kept my own counsel, resolved that if by accident I did get the office I should play the deuce with some of the gentlemen who put me in it.

However, as I learned afterwards from Governor Thomas himself, who was friendly to me, the nomination had been irrevocably pledged to Harry A. Lindsley. He became the party candidate and was elected.

Apologetic about the way I was "turned down," Boss Speer offered me the nomination for district judge. As I look back at it now, the gang was a bit bewildered about me. It had realized, without my realizing it, that I had already gained considerable strength with the people; in other words, that I would be an asset to the platform behind which they might camouflage their real purposes. But the gang was not to be allowed, despite the soundness of this strategy, to "play with fire." For the combination of public utility corporations, as it was later explained, wanted a certain judge for this place, backing him with the promise of a large campaign contribution. So I was again dropped "for the good of the party."

Nevertheless, I went into the election with enthusiasm—a fact that some of my friends, who knew about the two eliminations from the party ticket, could not understand. The truth, which I kept to myself, was that I was never really interested either in the district attorneyship or the district judgeship but I *was* vitally concerned over certain reform measures that I wanted to get through the legislature. I still had hope that if I maintained my influence in the party I might use the gratitude of my party friends to that larger end.

So I became a member of the Democratic State Executive Committee and learned how amazingly high were the legitimate expenses of a political campaign! And it became clearer than ever to me why the machine, from practical considerations, was forced into close alliance with the public utility corporations, the gamblers and the underworld and all the rest of the privilege seekers.

Meanwhile my work as Public Administrator and Guardian in the County Court was bringing me more and more up against the stark tragedy of under-privileged childhood. I was already, unconsciously, groping my way towards the foundation of a new institution that would help to build up, rather than tear down, the boys and girls with whom the state came into direct contact.

The importance of getting more completely into that work dawned upon me.

The judge of the county court, Robert W. Steele, had been sympathetic with many of my aims. He let me have my way about many things. Being a technical lawyer of the old school, however, he had not always agreed with my contentions especially as to possible extensions of court procedure.

It occurred to me one day that I might use my growing power with the Democratic party organization to promote Judge Steele from the county court to the state supreme bench. He had served a term as district attorney, when my friendship with him began, and he had been an "office partner" of my old employer and preceptor, R. D. Thompson. In these years I had learned to admire him for his courage and honesty and his loyalty to the public interest.

He had been, it so happened, an active member of the Republican party organization—a fact that fitted neatly into my plan for his advancement.

The Democratic member of the supreme court whose term was about to expire was a violent reactionary, opposed, for example, to the eight-hour law and similar progressive measures. I believed that my friend, Judge Steele, would be much freer in such matters than the incumbent.

But the Democratic party leaders, who had standing with the corporations, were all demanding the nomination of the then incumbent, who was a candidate for re-election. When I complained of his reactionary attitude, and certain outrageous decisions in the conflicts between the privileged interests and the people, they insisted his nomination was necessary, if we were to receive the badly needed campaign contributions, that come mostly from that source.

Well, I deliberately set about to undermine this reactionary supreme court judge. I had a friend strong in the Democratic organization who was then a power among the labour organizations and to him I took my plan for defeating this private servant with public power who, I was convinced, was a tool of the corporations. Working together, we stirred up widespread opposition to him.

The days of "fusion," as I have already said, were with us. I knew the Democratic organization very much wanted its allies, the Silver Republicans and the Populists, to concede to them the office of governor. And I explained that we as Democrats—if granted this concession—could hardly ask in the apportionment of the state offices for another place as important as judge of the supreme court. I therefore suggested to the fusion committee that it agree to assign the supreme judgeship to the Silver Republicans, of which group my friend, Judge Steele, was a member.

After encountering considerable opposition my plan went through and it seemed certain Judge Steele would be nominated despite the efforts of the corporations who were backing one of their friendly attorneys and judges.

With our programme promising success I went to Judge Steele and told him what I had done, assuring him he would be our next supreme court judge.

He was both surprised and sceptical.

"You're joking," he said. "You might as well say I will be the next President of the United States."

He had not been a candidate for the position and he had never dreamed of succeeding to it.

In talking with him I made no secret of my motives. I was his friend. I was an enemy of the corporation Democratic judge. And finally I desired to place myself in a position where I could advance my programme for the extension of court procedure in the interest of children. Of course, under these conditions, he was for me as his successor.

Well, the fusion movement carried the county and the state in November, 1900. Our "people's party" swept into power—but I knew its real character and expected little help from it in the legislature in getting my reform laws passed. Gardener, still my nominal partner, would go back to the senate with my draft of the constitutional amendment that was to clear the way for our new three fourths jury law but I felt sure he would never fight for it. (And he never did.) Judge Steele had been elected to the supreme bench but I had not yet been appointed his successor as county judge. The battle had only begun.

When the county commissioners, whose duty it was to name the successor to Judge Steele for the unexpired term, met, they agreed upon another attorney who had by no means been as active as myself in the party counsels but who had the backing of one of the great corporations.

Happily, however, their vote was only informal and had yet to be confirmed at a postponed meeting.

My popularity, gained through real party devotion and hard work for the party's ideals and principles, stood me in good stead. I had a petition of endorsement from certain members of the Democratic Executive Committee. Governor Thomas was for me. His opponent for the senate and former law partner, Senator T. M. Patterson, with whom I had been associated as counsel in the famous "Tritch Will Case," had also without my knowledge gone before the commissioners and urged my claims. At a meeting in December, 1900, the commissioners abandoned their informal decision and voted to accept me for the unexpired term. The regular election, anyway, was only about a year away and if I became obstreperous in antagonizing the corporate interests I could then be disposed of.

In January, 1901, at the age of thirty years, I took office as county judge, having formally terminated my partnership with Senator Gardener.

In *The Beast and the Jungle*, published in 1910, I described the setting of my new activities:

"The Court House of Denver is the usual old stone building . . . standing in the centre of a city square, with lawns and stone walks and elm trees in which the city sparrows are always noisy. On its front lawn, in the usual decorative fountains, some bronze-coated nymphs and cherubs disport themselves all the winter in the memories of a discontinued shower-bath. On the pinnacle of the building's dome there stands the inevitable emblematical figure of Justice, but it has been twice struck by lightning—equally emblematically, no doubt!—so that Justice has lost not only her scales but the arm that upheld them.

"Here, in the dingy courtroom, with the usual drone of court officials and the usual forensic eloquence of counsel addressing the usual yawns of bored juries, the county court was held. . . ."

It was the busiest court in the state. It was the probate court for the city and the county. It had jurisdiction to try election contests and civil suits in which property to the value of not more than \$2,000 was involved. It was the court of appeal from police magistrates and justices of the peace. And it had criminal jurisdiction in all "misdemeanors" and in "felonies" in which the accused was under twenty-one years of age.

Into the formal grind of court work I was at last plunged and there passed before me daily the stream of unhappy humanity—families quarrelling over wills, wives suing for divorce, landlords and tenants squabbling over rent, debtors and creditors, purchasers and agents. Jury cases involving property of so little value as scarcely to pay the fees of the wrangling lawyers were dragged along for days.

One winter afternoon shortly after becoming the judge with new powers for my work, I was listening to a tedious suit involving some musty old mortgaged furniture that had been stored in a warehouse when the assistant district attorney interrupted to ask me to dispose of a case that would not take two minutes.

I gave my consent.

Inside the railing stepped a trembling, wide-eyed boy whom I shall call Tony Costello. A railroad detective came forward and testified that the boy had stolen coal (and maybe



other things) from the tracks and cars. "Tony" stood defenceless, terror-stricken, unable to understand what was going on.

Taken unaware, as I was, hearing only one side in the fervid appeals of the prosecutor, there seemed to me but one thing to do. I sentenced Tony to the state reform school.

I hadn't time even to consider a suspension of sentence when suddenly the air was rent with a scream that was to ring in my ears through all the years of my life and set me more determined than ever in immediate and daring conflict with the forces and conditions that were oppressing and maltreating childhood in my state and nation.

The outcry of agony came from the toothless mouth of an old woman who had worked her way down the aisle in front of my bench. There she stood—the mother—arms waving in air, shawl clutched to breasts, face writhing terribly as she shrieked with anguish. Once she broke away from the bailiff and beat her head against the courtroom wall—as if she would batter the court house down upon us all and bury our injustice under the ruins.

I adjourned court, retreated to my chambers. But I could still hear the woman in the hall, wailing and sobbing.

If I had been of different mould I suppose I might have forgotten. For I have known men who can brush tragedies like these easily aside—light a cigarette or gulp a cocktail at the club, play a game of golf, attend a church brotherhood banquet.

For what had been demanded of me and what the law required I was struggling with the "defence mechanisms," which promptly set at work in "normal" minds!

But I was still too near the sorrows and despair of my own youth not to understand. The cry of that mother had pierced through thin guards to my very soul. And for me there was no peace except in action.

I telephoned the district attorney to join his approval in my suspending sentence and giving the boy such probationary care as I was prepared to do. He was a stickler for the "letter" of the law, had little sympathy with my ideas, and—he hesitated.

I did it, anyway—as I have many times done since in the interests of justice.

Tony was restored to his mother. She stopped weeping.

So far any "good" judge might have gone—so far thousands, doubtless, have gone, anxious to get the troublesome "symptom" out of sight and mind. And the handling of juvenile delinquency has been moved forward not a whit thereby. We were then still struggling with the legal questions, not then settled, raised by certain legal minds as to what we could or couldn't do—under the law.

But I wanted to know Tony and Tony's home—out of what kind of suffering had this silent, terror-stricken lad been driven within the walls of our court?

With an officer who knew the boy I went into the Italian quarter of North Denver.

Enter this filthy shack with me, Dear Reader; and you, the "judges" of the state and nation, peer into the two rooms of the Costellos. Sit down—if you can find a chair—and gasp in the close foul air. Take a good look at that father over there, sick in bed from lead poisoning, a cast-off of the 12-hour-a-day smelters. Mills and smelters that fought the "8-hour law"—and other social legislation. See a whole family damned by poverty, going down in slow starvation.

Yes, and talk with the wild-eyed Tony, stealer of coal from the railroad company's tracks. Let's find out about this juvenile delinquency business.

Well, I talked with Tony and I found him not a criminal, not a bad boy, but merely a boy. He had seen that his father and mother were suffering from cold and he had brought home fuel from the railroad tracks to keep them warm. . . .

I gave him a little lecture on the necessity of obeying the laws and put him on "probation."

The mother kissed my hands. The neighbours came in to salute me and to rejoice with the Costellos. . . .

Again, I suppose, I might have trotted up the blind alley of inaction and sat down serenely to get my breath. For surely I had done all that morality, even Christianity, required—hadn't I been a "big brother" and gone into the home of the erring one, lectured him on good citizenship and given him his chance?

But there was no glow within me as I left the home of Tony Costello. Instead, I carried with me something of the Costellos' view of my court and of its absurd handling of their boy.

I began to think over this business of punishing infants as if they were adults and of maiming young lives by trying to make the gristle of their unformed characters carry the weight of our iron laws and heavy penalties. . . .

I was still thinking when three boys still in their teens were brought in tears into court for stealing pigeons from an old barn on Arapahoe street.

Why, years before three other youngsters and myself had started out to raid that same barn! The three had entered the barn but I had not had "grit" enough to follow.

Burglars? No, I decided. I had the clerk bring the boys into my chambers. I did not know it then, but the real technique of the juvenile court was being born.

I learned that the "burglary" was the result of a feud between the owner of the barn and the boys. The boys said their enemy had taken THEIR pigeons.

I placed the boys on probation. And then I found out from my clerk why so many children had been brought into my court on criminal charges instead of all being brought in under the chancery procedure provided by our law of April 12, 1899.

Fees! The officers were paid fees for each conviction. Many of them received no regular fixed salaries. So they'd round up the kids and bring them into courts on criminal court charges instead of chancery court procedures when the fee accounts ran short.

"Absurd, outrageous," I said.

I went into the jails to see how the children there were treated. I began to compile statistics on the cost of this established system of making criminals out of little children.

The deeper I went the more astounded I became.

I went about "agitating," talking to whoever would listen. I began to draft reform laws, throwing into the work all the balked enthusiasm of my unsuccessful efforts with Gardener and the legislature. If I could not help grown-ups, I might at least be permitted to help the children! I became a nuisance to everybody.

"Don't get so excited," friends told me. "People will think you're not sane."

But I persisted. I must find help for those doomed children. Surely there must be some relief from all this tragic waste! I was not looking then for the more perfected

juvenile court I later developed, much less the Institution of Human Relations which I later hoped would deal constructively with the varied problems of youth—the family and the people. I was still looking simply for an avenue of escape for children from the processes of the criminal law and the jails that were their necessary concomitants.

And then I remembered the following provision in the Colorado school of law of April 12, 1899:

"Section 4. Every child . . . who does not attend school . . . or who is in attendance at any school and is vicious, incorrigible or immoral in conduct, or who is an habitual truant from school, or who habitually wanders about the streets during school hours without any lawful occupation or employment, or who habitually wanders about the streets in the night time . . . shall be deemed a juvenile disorderly person and be subject to the provisions of this Act."

I had helped get that law through the Legislature and it carried many other provisions.

Here, plainly, was the way out.

None of the children in Denver henceforth was to be dealt with as a criminal. Only petitions under the juvenile act of April 12th, 1899, defining "Juvenile Disorderly Persons" (delinquents), with its various helpful provisions, would be accepted in any case involving a child sixteen years of age or under such age. Neither would they be taken indiscriminately to other courts because of the "fee" system, or any other system. The rights of childhood would be respected under the law, or, if necessary, even without any law. If our children were to be proceeded against, in any court, then it should be as the law of April 12, 1899, directed that they should be, namely, as "wards of the state" and as such to be corrected, helped and *educated* by the state in its capacity of *parens patriæ* (the over-parent, or super-parent).

It was true that this momentous first law was then known as "The School Law" under which our Juvenile Court was first established. It was intended primarily for the disciplining of our school children. But all of our children "sixteen years of age or under" were in the category of "school children."

It had been deliberately extended also to include children generally, as I happened to know from helping Senator

Stuart of Pueblo County in its preparation, discussion and in passing it through the Legislature of Colorado in the winter of 1899. It was passed and approved April 12th, 1899. I knew what it was intended for and I proposed to so construe it and extend it to every child's case instead of indiscriminately. This ignoring of the law and persistence in bringing children to other courts on criminal charges was also the experience in other pioneer states in their first early struggles to get somewhat similar laws enacted and then respected.

I asked the district attorney if he would not in the future file *all* of his complaints against children in our court under this law of April 12, 1899, and my rulings as to its meaning, application and in accordance with forms which we prepared and furnished him. He agreed to do so.

Happily we now soon had many other laws dealing with parents, non-support, desertion, divorce, custody of children, dependency as well as delinquency cases. I went about focusing all this work for the first time in this country, so far as I know, into one separate, special court equipped with jurisdiction to deal with every aspect of the case of the child and the adult owing any responsibility to the child. It was the first juvenile court in America so to function. And unless a court does so function it has small excuse to be called a real juvenile court.

Thus from the standpoint of the great number of laws and systems of original work with and for children and their parents and all others dealing with or responsible for them, and other added work that was for a long time exclusive and original with our court, it seems to have early attracted national attention before we even suspected it. It was written about and popularized quite generally in this country and in Europe.

I soon found myself engaged in advancing the ideas and work of the court all over the country and Europe. This campaign upon which I entered with enthusiasm consumed all my vacation periods for years. It took me to practically every legislature in the Union advocating the passing of laws and the establishing of juvenile courts.

At the request of the State Department in Washington, D. C., because of the requests to that department from many foreign governments, I found myself in a work to help other

states and nations that took about as much of my time as the work of the court itself. Long into the winter nights, after weary court hours, it occupied my attention.

Before other governmental agencies, that we worked for, came into being, we published and circulated mostly at our own expense literally tens of thousands of pamphlets on the laws and work of the juvenile court.

We have appreciated the very generous concessions from the highest authorities everywhere that no juvenile court claims any better title to the pioneership of what the juvenile court has developed into to-day.



*PART TWO*

THE JUVENILE COURT FUNCTIONS





## CHAPTER I

### THE RISE OF A NEW INSTITUTION

I DID not then know it but I was already at work on the creation of a new human institution.

The county court in which I first served as judge of the juvenile court and which afterwards was labelled by formal act of the legislature in July, 1907, as a separate and special Juvenile and Family Relations Court, was about to be transformed into an agency employing a technique almost, if not wholly, unknown to organized society.

It was a technique developed through more than fifty items of statute law, many of them original and for the first time enacted in our own state of Colorado after bitter controversy.

It was a technique that threw me into conflict with petty political hangers-on, "political" judges voicing and defending a backward public opinion, and the powerful reactionary elements of the church and the bar.

It was technique that meant "The Dangerous Life". As I look back to-day through more than thirty years of struggle, I am convinced that if I had ignored the purely political challenge of the public utility corporations whose crimes against the people had also been tried before me and other self-seeking groups and had confined myself to expanding and fortifying the functions of the juvenile court I would still have been a storm centre of controversy.

For the social implications of this court work were too far-reaching, too disturbing to the *status quo* to escape opposition.

The technique of this new institution must therefore be made clear. For this reason it becomes necessary to drop the chronological thread of our story at this point and give our whole attention for a time to a study of the juvenile

court, its philosophy, methods, aims, and accomplishments.

In this study I shall make liberal use of story and anecdote that will, I hope, vivify for the reader the varied phases of the court's work.

First, however, some general observations:

In an article, entitled "The House of Human Welfare," published in *The Forum* magazine, December, 1927, I explained something of the basic philosophy of the institution of human relations which we had been developing in the Juvenile and Family Relations Court of Denver.

The purpose of this institution, as I stated it, was "not to punish people, but to save them." And I continued:

"If they could be saved only by punishment, it would punish; but not otherwise. If society were imperilled by their being at liberty, it would imprison them; but not otherwise.

"Revenge would be no part of its programme. Its work would be medicinal, restorative.

"It would need more than the services of a judge, probation officers, and social workers. It would need medical men, trained psychiatrists, vocational experts, and others who would be capable of creating a machinery of adjustment, at once delicate and powerful, like the great scales in the mint that are said to be capable of weighing anything from a grain of gold dust to a ton of bullion.

"The great resources and authority of the state would be behind it. It would not merely be able to determine what things needed to be done, it would also have the power to do them."

And developing the constructive idea still further, I said:

"My ideal in the work of the Juvenile and Family Court of Denver has always been a healing ideal. I have learned with more than a quarter of a century of practical experience with an enormous variety of human material that the law of faith achieved by the casting out of fear is universal.

"When you make a man believe that you can help him, you can then cast out the psychic devils within him. You cannot do it with the power and completeness with which Jesus did it, for His was a supreme genius and a personality so radiant that few could resist it; but you can do it in your degree.

"You can be persuasive, you can be sympathetic, you can be as wise as long study and experience may chance to have made you.

"You can cut loose from those racial ways of thought that do not stand the test of reason and the light of inquiry. You can have faith and courage in yourself—the faith and courage which leap like a spark into the dry tinder of other souls and set them on fire.

"Each can do this in his degree and according to his own gift of insight. Some have more of this insight than others; and all can cultivate the gift and increase it by use.

"Those who have it most are those whom I visualize as functioning in a House of Human Welfare. . . ."

Of course, it goes without saying that I entertained no such clear-cut picture of our court or its functions at the beginning of my work.

Then I was merely in revolt against the old indiscriminate system of bringing children into the criminal courts and jails. In the school law provision of April 12, 1899, defining "juvenile disorderly persons," (which I later rewrote), I saw a way out of some of the brutalities of an antiquated criminal system. But I then had only the vaguest conception of the constructive work we were later to carry on in our court.

Very soon, however, as the result of my experiences with children I reached the basic conclusion that there were no "bad kids." Instead, there were "bad" conditions and environments which resulted in "bad" conduct. I began to draw a distinction between the child and the behaviour which was caused by his environment.

This distinction was, in fact, acknowledged by the state in the school law provision of April 12, 1899, in which it abandoned the rôle of the avenger, fastening upon the child the blight of conviction for crime, and assumed instead the rôle of the wise and loving parent whose purpose was to deal with and improve the physical and moral welfare of the child through changes in the environment.

The changed attitude of the state was strikingly illustrated by the changed forms adopted in the very records and blanks used in dealing with the child.

The proceedings were no longer entitled, "The People AGAINST" (the child or the parent). They were entitled,

"The People in the Interest of" (the child involved) "and Concerning" (the parent or other adult involved), "respondent."

The state was now frankly announcing that its fundamental purpose was to help people, not to hurt them. And especially was this true as to children and their parents.

Its purpose was to bring into the life of the child of the adult all of those aids and agencies that modern science and education have provided through the experts in human conduct and behaviour; in a word, to specialize in the causes of so-called bad things as the doctor would in the causes of disease.

And this conception forced a complete departure from the old "remedies" of violence, vengeance and mere punishment.

*The human artist succeeded the executioner.*

Externally, the new institution bore little semblance to the old court. For we soon ditched the machinery and methods of judicial autocracy, substituting the sure and natural approach of humanity. In the juvenile court I talked to boys and girls and grown-ups as counsellor and friend, with a minimum of formality. There was no lawyer to arise and ostentatiously declaim, to the resentment of a youthful witness:

"Your Honour, we object . . . incompetent, irrelevant, immaterial."

There was no judge sitting high and mighty on a throne handing down formidable decrees and sentences. The boys and girls and other interested parties sat around a table in my chambers and I there gained their confidence.

Stop them talking? No, we let them tell it all. We encouraged them to tell it all. We allowed no boy, girl, or adult to go away feeling that there had been any suppression, any denial of a "square deal."

As we go on through succeeding chapters specific experiences will be presented which shall make plain our hitherto untried methods of procedure. We shall set forth the concrete results obtained through the abolition of fear, the appeal to loyalty, pride, ambition, self-interest. We shall deal with the uses and values of "probation." We shall show how we sent boys alone over mountain ranges to reformatories hundreds of miles away—desperate "bandits" among them who had been captured after thrilling encounters with officers

of the law—and how they never, with possibly one exception betrayed the trust reposed in them.

We shall make clear how one modern court, at least, became an institution no longer hated by boys and girls and men and women whose weakness and mistakes had gotten them into trouble, but a place of refuge, a sort of spiritual clearing house in which they might gain new courage and inspiration to face a difficult world.

An institution of this sort, with its definite break with the past, could not be created over night. It was the product of never-ending propaganda culminating in scores of battles before the state legislature. The "Lindsey bills," as our various constructive measures became known, were for years a much abused and ardently supported feature of almost every legislative session. Some of these measures directly affected the functioning of the court and others were aimed at social and economic conditions which our experience in the court convinced us were destructive of the best interests not only of children but of adults as well.

A listing of some of the more important of these laws, together with our own independent departures in procedure, will be helpful here to clarify not only the official work of our juvenile court but its larger rôle in the life of the community.

In presenting this material, acknowledgment is made to a pamphlet prepared and circulated in the 1912 and 1916 campaigns by the Denver Christian Citizenship Union and the Women's Non-Partisan Juvenile Court Association, which were actively backing our work.

Among the "systems and laws inaugurated and urged by Judge Lindsey" (151 items in all) the pamphlet names the following:

A system whereby all children's cases were brought to one court, before one judge, instead of to promiscuous courts without equipment to care for such cases.

A law forbidding convicting children under eighteen years of age of crime, excepting capital offences and substituting the delinquency and probation system of the juvenile court.

A law forbidding public officials to charge fees for the prosecution and conviction of children.

A law forbidding putting children in jail and establishing in place of jail the detention home school, in which thousands

of children have been cared for, free from the stigma of crime and the degrading influences of jails, and redeemed to good citizenship.

The publication of reports based on facts obtained from every city in America, proving that over 60,000 boys were brought to the jails every year—and that three-fourths of them returned to jail. "No fact," the pamphlet says, "helped more powerfully in the fight all over the nation for detention home schools in place of jails for children."

A law permitting probation officers to arrest wine-room keepers, gamblers, and others who entice children into evil places.

A system eliminating much of the machine politics from control of the juvenile court and substituting therefor appointment of men and women in all its departments on their merits.

A system providing for paid probation officers throughout Colorado to look after young children drifting into crime.

A system of co-operative work between the school, the neighbourhood, the home, the church, the state, the business man, and the court in the interest of the child offender.

Colorado's splendid child labour law.

Amendments to the compulsory school law, providing for an entire year in school.

Pioneer work in behalf of public playgrounds and public baths in Denver.

A new probate code (1903) the effect of which was to save widows and orphans hundreds of thousands of dollars in fees from court proceedings.

A law giving orphan children the right to \$2,000 of an estate before creditors could touch it.

Improvement of the probate code to give widows more definite rights in the estates of their deceased husbands.

Inauguration of a system of trust and honour in dealing with prisoners, under which he has committed hundreds of prisoners to city, county and state institutions without losing a prisoner, saving to the taxpayers thousands of dollars in officers' fees, and—what is more valuable, retaining the love and respect of hundreds of young boys.

The "contributory" laws, making all persons legally responsible for the moral welfare of children with whom they come in contact.

Probation for adults for misdemeanours under proper safeguards.

Probation for certain felonies, such as non-support or desertion of wife and children.

Fixing the place of trial for non-support or desertion at the place of residence of wife or child.

Extending responsibility of man to support illegitimate children.

Extending responsibility of man to pay the expenses of childbirth to mothers of illegitimate children and his responsibility to support children in institutions.

Compelling county authorities to put up expense of returning wife and child deserters to the state.

Compelling the right of requisition in such cases.

Privacy in the trial of cases that involved the immorality of young girls, thus encouraging prosecutions, through also forbidding publication in newspapers or otherwise of names or identities of children or parents involved.

The first contributory delinquency and dependency laws in America.

A law requiring school boards to furnish competent teachers, instead of the old-time guards, in detention schools.

The first law in the history of jurisprudence permitting the state to consider environment and conditions in the lives of certain offenders in a chancery and not a criminal court procedure.

Laws making the juvenile court also a parental and family court.

Children's aid laws providing support for poor children so as to enable mothers to stay at home and care for them.

First system of boys' clubs in Denver.

First system of summer outings and fresh air camps for Denver's poor children.

Inauguration of a day nursery, the judge for several years personally bearing the largest part of the expense of operation.

These accomplishments, I should note here, would, of course, have been impossible without the help of thousands of loyal, understanding friends.

The list might be extended, particularly as to the broader activities and struggles for political and social democracy



but these will constitute the theme in a later story of *Battling the Beast*.<sup>1</sup>

Enough has been given, I think, to suggest to the thoughtful reader the vital difference between the formal, traditional "court" and the new Institution of Human Relations which we saw gradually emerging out of our daily contacts with struggling humanity.

## CHAPTER II

### SOME BASIC CONCEPTIONS

BEFORE we proceed with a discussion of our concrete experiences in developing the new juvenile court technique it will perhaps be best to consider further some of the basic conceptions upon which that technique rests.

The law of April 12, 1899, defining a juvenile disorderly person so as to include all children sixteen years of age or under whose conduct or behaviour had previously brought them exclusively under the criminal law, was an important acknowledgment by the state that the child was neither bad nor criminal.

It made possible the functioning of the state in its new rôle of wise and loving parent instead of avenger. In solving the problem of "crime" the state now began to recognize that it must deal with and advance the physical and moral welfare of the child, improve the home conditions, provide a more friendly environment.

As I think of the importance of environment, I am reminded of the work of that great and gentle naturalist, Luther Burbank, who was my friend. In the eulogy delivered at his grave in Santa Rosa, April 14, 1926, I remember I said: "Here he (Burbank) worked and wrought his marvels with the trees, the vines, the fruits, the grains, and flowers,

<sup>1</sup> The saving of more than ten millions of dollars in cash to the people of our city and state from the unquestionable activities of our court against various forms of political graft and corruption, and in the battle for other changes besides those of the old-time grafting "fee system" of politicians will be reserved for their more proper setting in our contemplated volume: *Battling the Beast*.

not forgetting any other living thing. To the birds he gave a new earth, and to the dogs and all living creatures, a new friendship and understanding, all as a part of the embracing kinship of the universal life. And as the sweetest of all that in the garden grew, he classed a little child as blood brother to the rose.

"As the great scientist rather than the poet that he was, he was the first to speak so beautifully of a child as only another plant—a human plant."

Burbank believed in tenderly nurturing this human plant, in providing it with an environment in which it could thrive and expand to its full potentialities.

After all, the state in providing this friendly environment is only wisely serving itself. For what is the state? Is it physical cities or towns, ranches or farms? No, it is the people. And the people start with the child. The best work the state can do is to protect its children. Only in that way can it save itself from destruction.

I am reminded that when the state is imperilled by war, it goes into the people's homes and takes children, sixteen, seventeen, eighteen years old from the arms of their mothers and sends them to the battle fronts of the world. In these great crises childhood comes to the rescue of the imperilled state and so I contend that when childhood is imperilled through the hardship or misfortune of its parents or lack of parents, it is the duty of the state to come to the rescue of the child.

In that way, of course, it is only coming to its own rescue.

Such is the basic philosophy on which rests all proper legislation in the interests of the child, including the laws which set our juvenile court in motion.

Social legislation for the protection of the child, it is interesting to note, traces back to the battles of the late eighteenth and early nineteenth centuries between the parents and the state over the "right" of the child to work in the mills of England.

At that time there were two distinguished members of the House of Lords who had a sense of humanity and whose names ought to go down in history—Lords Eldon and Thurlow, both of whom had been chancellors.

The mill owners and the parents said that the state had no right to enforce laws prohibiting the work of children in the mills. Such laws interfered, I suppose, with the then

supposed ownership of the child by the parent and the "sacred right of contract"!

Incidentally, at that time the idea of free schools for children was ridiculed. These free schools were called "ragged schools" because the poor children went there. The idea of educating ragged children!

When the fight came up in the House of Lords as to whether the state had a right, superior to the right of the parents, to direct the behaviour and conduct of children, Lord Eldon said substantially this:

"There is no child of the state imperilled by poverty, ignorance or neglect that the arm of the chancellor in his capacity of *parens patriæ* (over-parent) is not strong enough and long enough to reach out and protect from whatever the cause may be that is contributing to its distress."

Such men as Lord Eldon and Lord Thurlow played important parts in the fight to establish the legality of the compulsory school and child labour laws in England and I have always claimed that the juvenile courts of America had their beginnings, so far as law is concerned, in such rules then announced and finally, after the bitter struggles of such champions as Lord Shaftesbury in England, and many leaders in America, they were quite generally accepted. But the reactionary character of certain types of conventional, ignorant judges in America to-day still delights in destroying or weakening such laws whenever they can give the slightest excuse for doing so.

As I went deeper and deeper into my work with children, the social reason for their protection loomed ever more and more important. I was more and more impressed with the fact that there could be no worth-while state—or society—without children who are physically and morally healthy. In their "souls" and the "salvation" of those "souls" for some world hereafter I became less and less interested. I assumed that their "souls" would take care of themselves if their bodily welfare (and this implies also a wholesome moral and mental attitude) could be assured in the here-and-now.

Although the juvenile court was to work a far-reaching revolution in court procedures affecting the child under the new definitions of "juvenile disorderly conduct" or "juvenile delinquent person," its attitude, it should be noted,

was not new. It was in large part the attitude of the state toward the education of the child.

There was a cause for the disorderly or delinquent conduct of the child who violated the law. And the state, in its own interest and the interest of the child, sought to remove the cause of such conduct by a process paralleling the process of the state in educating the child in its schools. In the schools the state employed an adult called a teacher whom it paid and made responsible for improving or directing the mind of the child through "education." In the juvenile court—probably miscalled a court—the state employed experienced persons called judges and probation officers to understand the child and to deal with him in a way to help, and not to hurt, him (just the reverse of the theory of the criminal court, which was only to hurt him) and to bring him into a course of conduct that was social, not anti-social, and that meant respect, and not contempt, for the law.

Eventually, I believe, this attitude of the state toward the conduct and behaviour of children, as expressed through the juvenile court, will become its attitude toward most of the conduct and behaviour of adults. Society is more willing to accept changes for children than for adults but it will, grudgingly perhaps, finally accept them for the latter. For the humane and scientific approach is too effective, too productive of beneficial results, to be confined to a small fraction of the human family.

I want here to make another observation about our juvenile court achievements that I regard as highly significant.

Through the so-called "contributory" laws which we formulated and pressed to enactment by the legislature, the moral and human rights of the child were for the first time in the history of jurisprudence in any state or country placed on the same plane as its property rights.

In my work as Public Administrator and Guardian I had found that the state offered all sorts of remedies for the protection of the property of the child. For instance, in the case of a man who had embezzled money from his wards, two procedures against him were open to me. I could go to the district attorney and have this guardian or trustee—whether for a child or one who was insane—prosecuted for embezzlement in the criminal court. Or I could go to the

Judge of the Probate Court and ask that the man be committed for contempt of court until he restored the funds.

I found that in the sight of the law, when it comes to dealing with their property, persons are infants until twenty-one years of age. If a child came into an inheritance, or the right to money or property, I learned that the state would not even trust the parents, nor, if no parents, the Public Guardian, to handle that inheritance unless they came into the probate court and gave a bond in double the amount of the property or some other substantial sum, the condition of which would be that they properly invest the funds or otherwise conserve the property for the benefit of the child.

And I found that if the trust funds were dissipated by the guardian and the second remedy, a proceeding before the probate judge requiring the guardian to show cause why he should not be committed to jail, were resorted to, the guardian would not even be entitled to trial by jury, so extreme was the state in its determination to protect the child in its property rights.

Yet when it came to the child's invasion of the rights of property in some other person, this same state thought so little of the child that at the age of seven the child was deemed to be of sufficient reason and maturity to be placed in the same category as an adult and could be, and frequently was, proceeded against as a felon.

It was obvious to me that the state thought more of the property of the child than of the child. And it seemed stupid for the state to throw such safeguards about the rights of the child to property—which so few children had—and afford so little protection to his human right to be well-bred, well-cared-for, trained and directed as to his health and morals.

Well, our "contributory" laws, the first of their kind in their sweeping scope, held not only parents but others responsible for contributing to the delinquency or dependency of children of any age.

That responsibility could be enforced under precisely the same theory of law that protected his property.

Thus one of the laws I devised made the parent or other person responsible for neglect or omission of the conduct that might be expected of the parent or other person dealing with the child subject to criminal procedure by the state. This procedure, though in form criminal, was not solely

for the purpose of punishing the responsible persons—the court could sentence them, in severe cases, to pay a fine of \$1,000 or to spend not to exceed a year in jail, but it also had the right, in the interest of the child's morals and welfare, to place the responsible persons on probation. This procedure, it will be observed, corresponded to the procedure of the state in prosecuting the guardian in a criminal court for dissipating the child's property.

The other law which I devised, to protect the child against neglect or omission of proper conduct from parent or other person, corresponded to the law that gave the probate judge the right to commit to jail the defaulting guardian of property for contempt of court until he restored the property. Under this law, the probate judge could send the parent or other person, responsible for neglect or omission of proper conduct toward the child, to jail for contempt until he had done his duty by the child, within some reasonable limit generally imposed.

Thus one of the procedures, as in the case of the Guardian of Property, could be in the criminal court and the other could be under the chancery jurisdiction of the civil court.

Summing up, then, the major items of legislation discussed in this chapter, it will be seen that the juvenile court in its functioning had for the first time in America established the following principles in the name of the state of Colorado:

1. That the child sixteen years of age or under who was "guilty of incorrigible or immoral conduct"—to use the legal terminology of the juvenile law of the state of April 12, 1899—could be dealt with under the power of the chancellor in the county courts as a ward of the state, instead of as heretofore under the criminal jurisdiction of the courts, as a criminal or felon. He was now to be helped, guided, trusted, saved, whereas formerly he was merely punished, subjected to the vindictive vengeance of the state.

2. And also for the first time in history, as far as I know, not only parents but others, whose conduct might contribute to the immorality or neglect of the child, were held just as strictly accountable for their behaviour in dealing with the child as was the guardian or trustee of its property.

3. The state was also responsible under these laws to furnish a guardian to look after the character, morality and

general welfare of the child—as up to this point it had furnished a guardian for the property of the child.

4. That this responsibility of the child to the state for its behaviour and conduct, of the parent or other person to the child for its part in the child's behaviour and conduct, and finally of the state, both to the child and the parent, should be expressed through other forces than those of violence and vengeance: namely, the higher and finer forces of understanding, patience, kindness, firmness, charity, and education.

### CHAPTER III

#### THE ARTISTRY OF APPROACH

THUS with constructive laws we built the architecture of the state around its best asset, childhood. And for these more than fifty items of legislation and constructive work I have no apology to make.

But I was to find as our work progressed that these laws, however much they were exploited, praised and many of them copied over this country and in other countries, were not the most important things; that, without understanding men to administer them and to develop their implications, they did not get us very far in the fight for the child and the home.

I might illustrate from my own concrete experiences in those early days of the juvenile court. In my earlier visits, especially to some of these courts, I found the old formalities still persisting. I found, for instance, a judge sitting on a bench clad in his robes of office, with all the absurdities of police or criminal court procedure out in front. I witnessed even the calling of juries to try issues concerning the dependency of children that have no place with juries except in the rare case where there is danger of prejudice and therefore the jury might be preserved as a constitutional right.

I have seen mothers and children in these courts herded in with motley crowds and I have heard pronouncements of sentence from the bench followed by the screams of women and children until, instead of being in a court, I seemed to be in Bedlam. This was notably so in the juvenile

court of a very large mid-western city I visited in the early part of this century. It was at that time typical of most of the others like it. It was only a division of a regular court and made no pretence to handling every aspect of a child's case as our court did from its very early inception.

A genuine juvenile court should have the jurisdiction and equipment to deal effectively with every aspect of all cases concerning children. That is to say, all those cases concerning their relations to the state or that involve their relations with their parents or others, and in the relations of the state, their parents and others to them. And the juvenile court's jurisdiction as to practically all of such matters should be (as it is mostly in our Denver Juvenile and Family Court) special, separate and exclusive.

This work cannot so well function or come to its ultimate proper fruition and purpose except through the separate special court of exclusive jurisdiction like that at Denver, Colorado. This is the only way to keep it free from the difficulties, handicaps and abuses of the old-time formal courts, that were never intended to serve the welfare of children, but of which the so-called juvenile court is often mistakenly a part.

Responsibilities for the child's care as to all cases of adoptions, dependencies, delinquencies, the old-time *habeas corpus* or other actions of every kind as to its custody, support, moral and physical care, as far as the state is called upon to any action or share in it, as well as that of any parent or other person, should be thus focused and centralized in the one single, separate, central authority and court. I have studied this question for thirty years and following this plan in the creation of the first juvenile court of this kind in this country, in Denver, Colorado, I am sure we are on the right track.

Perhaps it is the only juvenile court anywhere, even as yet, where, for example, even a murderer could be tried and dealt with in the juvenile court if the victim were a child. In such criminal cases as contributing to dependency or delinquency or statutory rape, indecent liberties against children, and the like, the advantages to the children witnesses and victims to have the sheltering, different, more psychological and better protection of such a court, as we thus first created in Denver, was demonstrated time and again.



Other so-called juvenile courts seem utterly helpless and inefficient beside it for real child care and protection in many such of its angles and aspects.<sup>1</sup>

Understanding judges are more important than all of these things just mentioned, important as they are.

And just as important as understanding judges are intelligent enforcement agencies.

I recall a type of old-time policeman trained alone in the ways of violence bringing a small boy into our court. As the officer came in he glared at the little fellow as though he wanted to eat him up. The boy glared back as though he wanted to throw a brick.

First and foremost, it was evident that no love was lost between the two. The approach in both cases was one of hostility. There is such a thing as human artistry and the greatest of all human artistry, perhaps, is the artistry of approach.

"He is a bad kid," the policeman blurted out, "and there are fifteen or twenty more like him down there about those tracks that I haven't been able to catch because of this kid. For every time I come in sight he is on the lookout and when he sees me coming, he yells, 'Jigger the Bull!' and everybody scoots and I can't ketch 'em——"

This last with an air of offended dignity.

"And when I got this kid, I asks him the names of the kids that ran away and he says, 'I dunno 'em. I never saw 'em before.'"

And then as he glared at the boy: "The little liar, he knows every one of 'em."

Of course, there is no artistry in that method of approach.

I may say, in justice to policemen, that they are not all alike. I have known officers sent into a neighbourhood only to provoke riot while others sent to the same neighbourhood evoked respect. One kind helps to enforce the law and the other, because of a different attitude and lack of understanding of human beings, helps to break it.

I have always made it a rule never to call a boy or a girl a liar, if it can be avoided—and it generally can. And yet, in

<sup>1</sup> The court jury trials and hearings of cases of adult criminals, where the victims were children, were held at special times so as not to come in contact with any children except those necessarily involved as victims or witnesses.

the present case, I had to retain the boy's respect for the policeman as the representative of the law as best I could.

"Jimmie," I said with such warmth of smile and attitude as I was able to command, "I am sure you don't understand the officer and he perhaps doesn't understand you. If you did I don't think you would have run away from him and I doubt if he would think that you were really a liar.

"Now, I don't think you are a liar but I do think that you are afraid. The best boy may be afraid when he doesn't understand things. Then when he is afraid he may say things that are not what we call true.

"But that isn't because he wants to lie. It's because he's afraid and thus he doesn't know what else to do. Now don't you think that is true in this case?"

And presently our little prisoner half smiles through his tears and becomes as garrulous as he has been dumb under the menacing glances of his captor.

"It's jest like ye said, Jedge. I ain't no liar and I don't mean to do nothin' wrong but I'm jest plumb scared."

"Oh, yes," I tell him, "I knew you would admit that. You thought you were going to get in jail or the reform school, didn't you? Well, you are not going to get in any such place. You are just going to tell me the truth for I know you are a truthful boy. We are going to help the policeman and the neighbourhood and everybody"

"Sure," he says, "I'll tell ye how it was, Jedge. I live down there by the railroad tracks, I do, where those kids live. And they said there was watermelons in those box cars and we got in the box cars but we didn't find no watermelons.

"But one of de kids sez he bets there is sumpin good in those boxes 'cause it's got sumpin on 'em about figs and we thinks it is figs.

"So we gets open a box and finds a lot of bottles with sumpin on 'em about figs and we think it is sumpin good. So we drinks a whole bottle full——"

And then pausing, he blurts out through his tears: "And I thinks we've done suffered enough."

"Well," I said, "I think so, too, for fig syrup is not recommended in bottle doses."

The policeman doesn't see the humour in this episode that spread about my room and brought titters from the few

spectators. Instead, he proceeds to gloat over the boy's confession as evidence of the truth of his charge that the boy was a liar, instead of just a frightened kid.

"I told you he was a liar, Judge," he exploded as he turned on the tearful youngster. "Now you know you told me you didn't know anything about any of those kids and you didn't even know their names, but now you tell the judge that you know them all.

"Now, you tell the judge their names—I want their names, see!"

And the little prisoner, hesitating, appeals from the policeman to the judge, where somehow he thinks he finds sympathy and understanding, not for his sin but for himself. (For we are dealing much more with him, with what he is than what he did and perhaps why he did it.)

I see the tears come to his eyes again, but he is backed now by a certain confidence as he stands there pleading his own case.

"Do yuh tink, Jedge, that it's square for a guy to snitch on a kid?" he asks.

In some other age of Boyville, if you told or tattled on a boy, you "squealed" and a "squealer" was ever outlawed by the gang. But now if you told on a boy, in the slang or vernacular of the gang, you "snitched." And that was against the law. Not our law but theirs. The first commandment of the gang was—and I suspect ever has been and ever will be—"Thou shalt not snitch (tattle)—you will get your face smashed if you do." The human quality of loyalty was involved here.

And unless I had sympathy and understanding for their law, how could I expect them to have sympathy and understanding for mine?

But did this particular type of policeman have any respect for the fact that he was dealing with two worlds and the people that inhabited them and the laws that governed them?

And did he understand that unless he had sympathy and understanding for one he could not expect, much less exact, respect for the other?

The child world and its laws were just as real to Jimmie and as much to be observed and respected as our laws. For they were based on the finest of human qualities, loyalty and respect for each other, however much sometimes through

lack of maturity they seem to us to be misdirected. If they are misdirected, the least that can be expected of us is wise direction and not hostility.

Yet the whole scheme of the courts as they existed when I came to this work in 1899 was, and always had been, as far as legal directions were concerned, one of hostility, ignorance and revenge. I often wondered whether it was to laugh or to cry over the ignorance and stupidity of the shameless state.

Thus I found myself constantly indicting the state and society rather than the child and the criminal. I had no desire on my part that this should be overdone but I WAS DETERMINED THAT IT SHOULD NOT BE OVERLOOKED.

I wanted to try the power of forces other than those of violence, vindictiveness, vengeance and hate.

I knew that this attitude as applied to adults would be resisted perhaps through ages yet to come, but there was no excuse for its persistence in dealing with youth.

I knew its rigours and severities had been inadequate from the days when they hanged boys of tender years in Old England and New England—which days were still spanned by less than a century—and when crime increased in spite of it all.

But the mitigation of such severities was of little consequence unless we went much further into the fundamental causes of conduct and behaviour. And, during my own change of attitude, I was to see these causes operating not only with this one little prisoner of the bar but with thousands; not only with children, but with adults. Fortunately, many other persons were to see them, so that in a much shorter time than I dreamed or hoped—in a single generation—a revolution was wrought that brought about more fundamental changes in the attitude of society and the state than have occurred in a thousand years.

But to return to our little prisoner—

"Of course, I don't think you should snitch on a kid," I said, "I never asked a boy to snitch on another."

My well-meaning friend, the policeman, was unable to restrain at least a mild resentment as he noticed the triumphant look in the face of the little prisoner whose plea had won the approval of the court.

"Then how do you expect me to get them kids," the policeman inquired. "I been two weeks trying to ketch 'em

and now you are going to stand by that kid in his refusal to tell me their names."

"O, don't worry about that," I responded. "Jimmie will do more than give us their names. He will bring the boys to court. I am perfectly safe in discharging you from the case with the assurance that we will soon dispose of the lawlessness you have a right to complain about. Isn't that so, Jimmie?"

And there came a curious beam of happy assent from his dirty, grimy little face.

"Sure," he said, through a smile and drying tears. "You betcher life I'll help yuh stop it, Jedge, if yuh jes' tell me what to do."

"Oh, that is easy, Jimmie," I explained. "You go down by the tracks and tell the gang that I have asked Officer Blank to lay off the gang, that I want them to come and see me. I know they will cut it out. After school, to-morrow, you bring them here to see me. They will tell on themselves and you won't have to tell on anybody."

"Sure, I will," said Jimmie, "if I can git 'em to come."

"Well, you tell them, and, whatever happens, you just report to me."

And with one final effort to restore peace between the little prisoner and the irate officer—which eventually was to succeed—I was to behold Jimmie leaving the court in triumph, rather as its agent than its prisoner.

But the next day after school when Jimmie appeared in my chambers he was alone. He was crestfallen, if not discouraged.

"Well, Jimmie," I said, "what's the news from the front?"

But I was not prepared for the humour of the situation. "It's like this, Jedge," he said. "I tolt those kids you tolt me to come down and tell 'em to come and see you. But dey wouldn't nobody come. One kid said if his mudder found out he had been in dis trouble, he would git a good lickin'. 'Nother said if the cop was goin' to ketch him, he would have to ketch him. And a big guy said I snitched on him and he was goin' to beat me up when I never snitched at all."

Noting the seriousness of this last phase of his experience I hastened to assure him.

"Of course, you didn't snitch, Jimmie," I explained. "The cop said there were about fifteen or twenty boys in that trouble and we thought it was square to tell how many without telling any names and you said there were only seven. Now, I'll tell you, Jimmie. I think the trouble is that they don't understand. You see, you came back. Why? Because you understood and you are not afraid. They did not come because they didn't understand and they were afraid."

"Yes," he hastened to inject, "and dey said dey didn't believe dhat yuh tolt me what yuh tolt me."

"Oh, I see, you perhaps need some evidence that is more substantial than what you say you told them."

"Sure," he shot back. "Dhat's what I needs. Will you write 'em a note?"

"Sure," I answered, "I'll write them a note. What will I say?"

Jimmie edged up to the table while I took his dictation.

"Tell 'em," he said, "dhat no kid has snitched."

Now self-preservation is the first law of nature, and I sympathized with his precaution. Why shouldn't I? Hadn't I been a kid once myself, and who has a right to deal with kids who doesn't remember the days of his childhood?

"And tell 'em," Jimmie went on, as he gained more confidence from this response of sympathy, "if dhey will come to court and promise dhey will cut it out and never do it again yuh won't send 'em up this time."

Consciously or unconsciously, he knew they were afraid and fear is the father of lies, the promoter of lack of confidence between parent and child and the cold gulfs that follow and the war of the gang with the police and the war of the nations with each other. For the child's case is the case of all humanity and the cause of evil in the life of one is the cause of evil everywhere. So I wrote the note to the unknown gang.

"Dear boys," it read, "no kid has snitched. If you will come to the court and promise to cut it out and never do it again I won't send you up this time. Signed, Judge of the Juvenile Court."

That was the warrant and little Jimmie was the sheriff, but he didn't know it.

And how different was that warrant from the old warrant. For the old warrant read: "The People of the State of

Colorado against Jimmie Smith, John Brown, Tom Green and the balance of the gang," (however or wherever that hapless gang might be).

"To the Sheriff of the County, greetings—"

The greetings were always to the sheriff and generally with the same results as in the case of Jimmie and the cop: only war and more war.

But our little prisoner, now our assistant, departed right proudly with a warrant of his own dictation.

Of course, he didn't know it but it eventually had the effect of changing the law of Colorado to require that all processes in children's cases should read, as now they do read by law for the first time in the history of any state:

"The People of the State of Colorado in the interest of—'the gang,' whoever that may be."

And I was to find that Jimmie's warrant was so much more effective than that which came down to us from the wigs of the law, even though they were Blackstone, Kent and others. For out of the mouths of babes cometh wisdom. I have always insisted that children and youth are wiser than their elders.

The next day at the time set for the return of my little friend an officer came in to announce that there was a delegation from the fourth ward waiting outside to see me.

Presently there was ushered in little Jimmie with fourteen as typical ragamuffins from down by the railroad tracks as in my slumming days I had ever gazed upon.

Jimmie was proud and smiling even if the balance of the gang showed signs of timidity—though not without hope, for they trusted Jimmie.

"Well, I said, 'Jimmie, you didn't snitch on anybody.'"

I was looking to his world and the protection he needed there. And it did not go without appreciation as the face of the former little prisoner lighted up and there was a swelling of his chest as he gazed upon the expectant gang.

"But," I continued, "since the policeman said there were about twenty kids in this trouble you thought it would be square to tell how many there were in it really. And you said there were only seven. But you didn't tell the names of any. But, Jimmie, you got fourteen here—how do you account for that?"

"Oh," he answered, "there was only seven of us in it

but the rest of dhese kids dhey run wit' us, dhey does. And dhey got interested in that note of yours and dhey wanted to read it and I let 'em and dhey said dhey would like to come, too. And I said I didn't tink you'd care."

And it was very evident that I did not care before that conference finished. We not only had the seven who were in it but the seven who were not in it because they had not had the chance to get in it.

And then we had a snitching bee, which means that everybody tells on himself and not the other fellow. And since everybody agreed to that—for a sense of real justice is very pronounced in childhood—if you don't keep your word to tell on yourself after you promised to, then you give anybody leave to tell if he is asked. And while that seldom becomes necessary, nevertheless, if it ever does, it is snitching on the square, and you don't get your face smashed for that.

Of course, there was not anything that that gang had ever done that they should not have done that I did not know all about before the conference was finished. All of which proved that they were not liars but very truthful little citizens.

We had simply laid the spell of fear and whether in court or home or school when that is lifted the truth emerges triumphant. Forever and again I learned that fear is the father of lies.

Of course, they would cut it out, as indeed they did cut it out—as 99 out of 100 of such little citizens did and do when thus approached.

But a square deal required a great deal more than this procedure. A bad neighbourhood for poor people called for many things—

It called for community responsibility in the supervised playgrounds, perhaps the boys' club in place of the policeman's club with which to balance the temptations of an environment for which the children were not to blame.

And, oh, it called for many other things and when I found myself down by the railroad tracks looking into these things I looked so far that I soon found myself involved in all the problems of society. . . .

And the same friendly approach that worked with Jimmie down by the railroad tracks worked with Tony in *Little Italy*.



In Denver's *Little Italy* the Protestants built a church. Presently rocks beat against the doors and mud smeared its windows.

The Italian policeman on the beat failed to locate the miscreants. But the church board suspected it originated with the kids with whom the policeman was perhaps on too familiar terms.

The board complained to me.

I remember in the neighbourhood was little Angelina Angeloti. She had figured in a Romeo and Juliet affair in the fight between the local Montagues and Capulets that led to war between two juvenile gangs.

At that time she had pleaded with me "just to give Tony one more chance." Tony, scandalously enough, had been the real culprit who had wielded the small calibre revolver that landed a bullet in the calf of the leg of Angelina's brother, who had belonged to the opposite gang. Happily, a small flesh wound was the only casualty of what might have been otherwise a serious tragedy.

But Angelina loved Tony—there was no doubt of that. Tony was descended from the Lombards—he was red-headed and had blue eyes. (Don't tell me there are no red-heads among the Italians, because I know there are. Didn't Titian immortalize their mothers?)

In settling that case involving Tony and the shooting, Angelina had promised me to co-operate in keeping order in the neighbourhood.

I knew that I had a loyal supporter in my little friend and my first thought in solving the trouble of the little church was to enlist the services of Angelina Angeloti.

And after school and court she arrived with a gentle tap on my chambers door. The door opening to her call, she stepped in, a picture of childish eagerness, curiosity and expectancy that scintillated from her rabbit eyes as she rolled them about the room, guarding against any chance of encounter with the black-hand that might complain against her. She stood there alone facing the judge—alone in his chambers.

With an assurance in which there was only a slight timidity as to whether or not *she* was booked for trouble she began: "Mr. Judge, Teacher tolt me you wanted to consulation wit' me."

"Yes," I said, recalling her promise of co-operation. "You see, Angelina, somebody has been throwing rocks and mud at that Little Church, and now I understand they have broken the stained-glass window. We must stop it and I know you can help me. Surely you know all about it, Angelina, and can tell me what boys are committing this sacrilege against the church."

Her rabbit eyes rolled in her little face a bit disturbed. Did she know? Would she tell?

"But, Mr. Judge," she countered, "dhey's Protestants—Protestant Devils, dhey is. And dhey comes to evangelistikize wit' us."

"But, Angelina," I said, "the Protestants have their rights and we must protect them. Now you tell me who the kids are."

Her rabbit eyes rolled, plainly telling me that I had stirred a conflict within her. She wanted to be loyal to her friend, the judge, but there was also loyalty to the gang and the penalties there were perhaps more certain than anywhere else.

"But, Mr. Judge," she said, "if I tolt that, they would hit me and the cops would get them—they would git in jail."

And her little face showed terror at such results of her "snitching."

"You are wrong, Angelina," I said. "I would not ask you to tell if I was going to hurt them. I am only asking you to tell because I want to help them. That is not 'snitching'—don't you agree with me?"

"Oh, yes," she said, "if you promise the cops won't get them and they won't get in jail and hit me."

"I do promise that, Angelina. I only ask you to trust me—you know I trust you. And, now, who was it, Angelina?"

And then her eyes rolled toward each window and door as though to make sure no eavesdropper should catch her part in what might be disloyalty if not properly understood and she leaned over the table and half-whispered in my ear:

"It was Tony and his gang."

And then she added, instinctively assailing the gang's "victims":

"But dhey was Protestants, Mr. Judge!"

"Yes," I said, "but that is no reason for throwing rocks and mud at their church and surely you will agree that they had no right to break that stained-glass window. Why, Angelina, I understand in the window was the picture of God."

"Oh, no, jest a Protestant God and Tony said he couldn't hurt you—so they broke his face in, yes, ma'am," she concluded by way of conscious defence mechanism.

"But, Angelina," I argued, "there is only one God. There is no difference between the Protestant and Catholic God."

"Oh, yes, there is," she exclaimed. "I have seed 'em"—this quite excitedly—"I have seed 'em in the Protestant church and in the Catholic church."

"My dear child," I insisted, "what is the difference?"

"Oh, the Catholic God is the real God," she answered. "He is much the biggest. He has got longer whiskers and a bigger ring around his head and the light squirts further—much further."

It was something outside of the church, or either church, with its childish notions of God, that nevertheless gained respect where the church had failed. It was all to follow from the information vouchsafed by Angelina. I soon had Tony and his gang voluntarily coming over to see me but in the necessity of gathering the clans he had caused more or less excitement in the homes of Little Italy.

One day I found my room filled with members of the two contending gangs, now united in the lawless purpose of an attack upon Protestantism—a most cohesive force on this occasion—with excited mothers wanting to know what it was about and what dire penalties should face their offspring.

But they felt relieved by the kindly approach in my plea to them for the rights of others.

Tony was to become the defender of Protestantism. He was promptly chosen the leader by the gang itself to protect the church and to report to me if there were any violations of the promises given in behalf of true sportsmanship and the rules of the game.

He insisted that he could be the same as the cop and beat them if they did not behave.

"No," I said, "Tony, you just tell 'em."

And following my advice he immediately proceeded to tell the gang, with the accompaniment of the most violent swearing, how he would break their damn necks if they didn't cut it out.

The good old deaconess from the church who had watched these proceedings with undisguised satisfaction, now suddenly screamed in protest, "Judge, stop that boy. He is swearing."

The astonished Tony hesitated as he turned to the lady with the explanation, "Why, don't you want me to tell 'em?"

"Oh, yes, but not to swear at them."

"Well," said Tony, "if I didn't, dhey wouldn't understand me."

Just a little understanding of the rules of the game, culture and good taste, and miracle of miracles the whole gang was soon collected in voluntary attendance at the moving "pitcher" show in the basement of the Little Church.

Now, if I had said to Tony and his gang, "Now, look here, boys, I am instructing Officer Picolli to keep a strict watch on this situation over there and report to me if there are any further depredations," that would have been one thing but it would not have been the best.

If I had said, "Now, Tony Diana, I want you to keep an eye on these kids and report to me any violation of their promises," that would have been still another thing, but not a good thing. It would not have been fair to Tony or the gang. Tony would have had a fight on his hands and he would have been "beat up" as a snitcher. Incidentally, that is why I am against the employment of juvenile policemen.

Only with great caution and close contact was I justified in saying what I did say:

"You boys have all promised me to respect the Protestant church. I believe you are going to keep your word. I know I can trust you, but I must have someone in that neighbourhood to report to me how well you are keeping your word and I want you kids to decide or select one of your number to do that. And, of course, if any boy should not keep his word, will you fellows instruct him he can tell me about it?"

"Sure, Judge," they all chimed in.

With knowledge of gang psychology and leadership, I, of course, knew in advance that they would select Tony for such responsibility, and that is quite different from my selecting him. In compliance with the arrangement we have entered into he is carrying out their instructions, not mine. And, of course, in the end he represents both of us.

It is not because they are as interested in my world and responsibility as I am but because there is always a certain amount of pride even in the gang, if we know how to bring it out. And there is a satisfaction of their ego and a way of placing responsibility upon them, one that they are always anxious to discharge, if we know how to get their loyalty and respect.

That is why, when the active member of the Little Church board visited Little Italy, he was met at the frontier by Master Tony, who hopped on the fender of his automobile, conducted him in safety to the Little Church. And woe betide any kid who threw at him either rocks or the epithet, "Protestant Devil!"

#### CHAPTER IV

### THE DOCTOR GOES TO WAR

IN the early days of our work, especially in 1901 and 1902, I had the good fortune, through presiding in a court that handled the county's insane, to come under the influence of Dr. T. J. Eskridge and Dr. Clayton Parkhill, two of the most eminent neurologists of the West.

They both took a keen interest in my work with children, as I had taken in their work with the mentally afflicted.

As a result of their voluntary co-operation ours was one of the first institutions of its kind to have the advantages of help from the medical profession—a help that has since developed into the elaborate assistance of psychiatrists, psychologists, and specialists that have meant so much in all of the up-to-date courts of the country.

In all these years, while our court was not large enough to maintain an independent clinic of specialists, it was never without the generous and voluntary services of the ablest specialists in the medical profession.

When the state psychopathic hospital, with its specialists from some of our great universities, was established in Denver we immediately added a special contact with this institution to the voluntray contacts already built up in our many activities for children, adolescent youth, and adults.

I was therefore in a position to know the work of these specialists and I yield to no one in my respect for the valuable assistance it has brought to the courts.

But, notwithstanding the value of its scientific contribution, I am profoundly convinced that so far as most of our cases were concerned—especially those that came to us in a voluntary and unofficial way—the influence of a strong, vigorous, sympathetic personality in the court was the most vital factor in bringing the best out of either the youth or the adult whose conduct was anti-social.

Human beings are a bundle of qualities and, while the expression of these qualities is often subject to mental or physical conditions that call for the aid of these specialists, it is surprising to find out how much good can be brought out of an individual merely by understanding how best to approach him, how best to appeal to his loyalty and pride.

A child finds great joy in pleasing, when there is someone to please; great stimulation in praise, when there is someone to praise. He grasps eagerly at the opportunity for conduct and expression that brings the satisfaction of accomplishment and the appreciation of parent, teacher, officer or employer. And the personality that understands these things, whether consciously or sub-consciously, is equipped to accomplish much in the field of human artistry even without technical training in the new psychology; although, of course, he can accomplish more with such training.

The point I am making is the basic importance of the natural aptitude for this human artistry, of the capacity for the same love and joy in playing upon a human instrument that another type of artist finds in playing upon his musical instrument. I sometimes think that real human artists called to an institution such as was ours (mistakenly called a "court") are born and not made. Educational equipment may help but the work can never reach its highest fruition except through the love and joy of which we have spoken and an accompanying consecration of life to the help of others.

Perhaps the first thing the human artist discovers in his work either with children or adults is the necessity of removing from their minds the terrible and blighting effect of fear, suspicion and mistrust.

As we have shown in the stories in the preceding chapter, you can't do much with people if they hate you. And they will hate you if your attitude is of the brutal type that provokes an unwholesome fear. They will hate you and they will lie to you.

Of course, at the other extreme are the dangers of leniency. You can't do much with people if they feel contempt for you and that is more than likely to be their attitude if you are just soft, "dead easy," sentimental and weak.

It is a part of human artistry to know how to avoid the dangers of brutality on the one hand and the dangers of leniency on the other; to know how to gain the response of loyalty not only to yourself but to the good life by the wise use of firmness tempered by kindness and wise understanding. For one may be kind and yet firm. Those in authority, whether parents, teachers, officers, or heads of great business enterprises, cannot hope to succeed in their dealings with people unless they understand these elements of human artistry. . . .

When I began to apply this human artistry to the work of our court I soon found myself hampered by silly rules and technicalities that were designed to avoid the constructive justice I was after rather than to promote it. And, braving the certain conflict ahead, I smashed the rules and technicalities. As I look back upon those years of struggle to-day I rejoice that I repudiated largely the traditions attaching to courts and judges. While not without some good, these traditions were capable of much harm. For I had, with my own eyes, seen them work as much injustice as justice.

I rejoice to-day in that repudiation notwithstanding the difficulties it raised in my path—notwithstanding the fact that I was bound to be misunderstood by the people and, in the high tide of my hardest battles, to have as a veritable pack in full tilt against me those who should have been my champions. . . .

I not only abolished rules and technicalities in the misnamed "court." I extended the sphere of influence and

activity of the court itself. I saw how helpless we were to accomplish the broad results we were striving for unless we went beyond the court and, as a result of our experience with the individuals we met there, sought for the causes of the troubles we were called upon to alleviate. And I soon discovered that I was not a "judge" of a "court" at all, because "judges" and "courts," within the limitations fixed by bar associations and their so-called "ethics," had no right to take part in the larger work of alleviation. It was often their "duty" rather to be the supine ally of injustice rather than its real foe.

I was frequently cautioned against delving into things that were "none of my business" but I went ahead. For that warning only served to convince me more than ever that the things that custom, convention, society, judges and bar associations generally assured me were "none of my business" were in very truth a most important part of "my business."

It was generally the cry of cowards, hypocrites, "devourers of widows' houses," who would not lift one little finger to alleviate human suffering.

Of course, I was interested in the labour movement. Of course, I was interested in eight-hour laws, in employers' liability and workmen's compensation acts, in industrial accident and safety appliance legislation.

Of course, I was interested in private monopolies of the necessities of life—in the exploitation of people through greed and avarice. I was interested in helping to right injustice and prevent robbery wherever I could.

I felt like a doctor in a hospital—for over and over I have said that the work I engaged in for a life time in my own city of Denver belonged more to the domain of the medical profession than to the legal profession.

And yet I was more than the traditional doctor in a hospital. For he treated only the patient before him. It is true that in these latter days he went into the laboratory and isolated the germ that caused the fever that had stricken his patient. But generally he did not go beyond the hospital into the swamp lands to locate the infected water supply that bred the germ. If he had so ventured forth he would have found that the single patient was not alone the object of his solicitude—that the health and happiness of the entire city



depended upon the elimination of the causes that brought him the single patient. He would have understood that unless these causes were eliminated the hospital would have an increase in patients no matter how much he might do for the one person afflicted.

Well, I went beyond the court into the swamp lands of politics and social and economic conditions that made for poverty and pain, discord and crime.

For when I saw the hundreds of thousands of pathetic women and children—to say nothing of their hapless husbands and fathers, or lack of husbands and fathers—in that long procession passing through the courts of our country I knew that the judge who sat on the bench and contented himself with merely trying cases would accomplish very little, aside from drawing his salary and remaining eminently respectable and acceptable to the ruling powers.

Perhaps none of the long excursions beyond the confines of my court in those early years was more enlightening than the one I took on one eventful day when, after having left the bench with its cold formalities and its everlasting gulf between prisoner and judge, I found myself down by the railroad tracks with the little gang that voluntarily and alone and by other powers than those of force and violence had landed of their own volition in my Institution of Human Relations.

No judge was expected to follow the case of that little gang down by the railroad tracks, but there I was with the little gang trailing along and quite delighted with their new-found friend.

In the back yard of little Jimmie's home there was what he enthusiastically pointed out as his elevated railroad. It ran from the crotch of an old tree to a sandpile beyond. The soap boxes on wheels were the first addition to its rolling stock. . . .

And I remembered the bitter complaint of our friend, the policeman, against the gang. Hadn't the gang stolen lumber from the builder's pile and soap boxes from the corner grocery? Hadn't the gang's members already been in jail for violating the law that existed for their "protection?" And didn't the policeman want them back in jail—or the detention home school, that had by this time supplanted the jail that had failed so miserably?

The policeman was right. There was the lumber stolen from the builder's pile and there was the soap box on wheels—now the elevated railroad. Of course, I admitted that the theft involved was bad.

*But justice demanded also that I insist that it was not the first railroad that had ever been stolen.*

There was our own city railroad in Denver. Hadn't that been stolen? Not as one would steal your pocket-book, for that is not the way of the big thieves. The value of that railroad depended largely upon the franchise that gave to a crowd of big business men what was at that time a monopoly in transportation, a prime necessity of life for which tribute was exacted upon terms which the big business men and their politicians had imposed upon the people through their ownership of the political parties.

I knew very well how these big business men manœvered for the power that enabled them to get these franchises and other "special privileges"—how they named district attorneys and judges as they named their office boys, how they controlled elections corrupting government at its very source, how they always got what they wanted by fair means, or foul—generally foul. And none of them ever got in jail for it, except the ones that I—stupid, ignorant ass that I was—had sent to jail. . . .

I passed from the back yard of the boy "who stole a railroad"—the boy who was so constructive that he had to become destructive—into his home. I wanted to know about his father and mother. Of course, I had already learned something of the mother in the court procedure. But the father—there he was, as I had suspected, on a bed of pain in the last agonies of lead poisoning. For many years he had worked for twelve or even longer hours a day in the poisonous fumes and gases of a great industry.

Now, I didn't object to the industry but I *did* object to the attitude of those who directed it in thinking more of profits than of homes and children. For they had, through their political party, fought the demands for an eight-hour law. And when they lost with the people they generally won with the courts because the judges of these courts frequently owed their appointments or elections to these big business men and their political associates.

You see, when I went into the "swamp lands"—into

Jimmie's home down by the railroad tracks—I was in a world that no "judge" knew, or was allowed to know, anything about. It was a world of bitter struggles sometimes drenched with blood and tears (tears mostly of women and children)—a world of strikes, lockouts, massacres, murders.

Standing in little Jimmie's home, what else could I do but resolve to join with the others and press the fight for the eight-hour law to complete victory? For how could we protect little Jimmie unless we protected little Jimmie's father from lead poisoning and other occupational diseases? How could we expect Jimmie to stay out of court and in his home unless he had a home to stay in? And what is a home with a stricken father and a distracted mother?

Some of the boys that came to my court had no fathers. Why not? In my "swamp land" excursions I found out. I learned that their fathers had been killed in those coal mine explosions in Southern Colorado before their widowed mothers had come with them to live with relatives in Denver. Pursuing my investigation, I found there were a thousand of such children orphaned in a comparatively brief period from coal mine explosions in that section of the state. I found that the number of fathers blown up in the mines there was five times as great as in other sections where laws requiring safety appliances and inspections were enforced.<sup>1</sup>

To work effectively for the children, then, I must fight for the same kind of safety laws for our state. I could no longer sit on the bench and see the pathetic procession of dependents and delinquents go by without pointing out the causes that I met in the "swamp lands" and urging the remedies.

I was not only a doctor—but a doctor gone to war. I was in the thick of the conflicts of "The Dangerous Life." And, irony of ironies, the very men who had patted me on the back for my "work with the dear cheeldren," the very pillars of church and society, now became my bitterest enemies!

<sup>1</sup> A youth had testified in our court that while working in one of these coal mines in Southern Colorado, during the excitement following an explosion in the mine, when he had sought to reach some of the imprisoned men, a hard-boiled mine boss had interrupted his efforts with the cursing command: "To hell with the men; get those mules out of there!" The mules were valuable, but so were the children and their fathers who risked all the hazards and dangers involved for the comforts of light and warmth that we enjoy, often at the expense of these dependent children.

For they were among the men whose greed and cunning had brought the "dear cheeldren" to my court.

As I look back upon those "swamp land" excursions, I remember well the "smart" lawyer whose trail I crossed in running down one of our tragic cases.

It involved a widow with four children. The "Humane" Society (often inhumane) had attempted to take the children away from their mother. She was immoral, the society said. There was a boarder in the house and a mother without a husband who harboured a boarder was a dangerous character—especially to the pure minds of the humane society's sadistic savages!

I can still hear the shrieks and wails of that mother, who suspected courts, as she threatened self-destruction at the thought of losing her babies.

The railroad company had paid her two hundred dollars for her man, a ward politician had explained. But why the money should be paid by the railroad company when the husband had been blown up on the slag dumps of the mills, the ward politician failed to explain.

I was curious.

"You see, it's lika dees, Meester Judge," a fellow countryman of the dead workman volunteered. "Her man, he getta killed about a year ago. You see, about seex o'clock in the evening, when the men about to quit, they verra tired. And so he stumble and keeck over bucket of water on red hot slag. Pouff! Meester Judge," as he suited action to word, "big boom! Kill five men. Then she have no man but have the four cheel. She can no support so many cheel. So the boarder, he old friend, he come and live with her.

"But they not bad, Meester Judge, they not bad. Just friends and they live together. Marry? Oh, he cost too much. . . ."

But the money—how did the widow get it from the railroad company when her man worked for the mills?

"Oh, that is easy, Meester Judge. You see, it's lika dees. De law that forbid the man work more than eight hours for mines and smelter mills ees very bad law. But the law is not against they may still work twelve hours for railroad company in ore dumps and slag piles. And you see, Meester Judge, verra bright lawyer—smart man—he give opinion that the railroad company put on they pay roll the

men who work on ore dumps and slag piles—that they get transferred on pay roll of railroad company. Then, Meester Judge, you see, they work for twelve hours.

Yes, even for the pittance that was then paid. But who is this “smart man?”

“Oh, don’t you know, Meester Judge, the smart lawyer?”

And then, with salvos of admiration, there spouted from his lips the name of a young lawyer and politician, afterwards to become a candidate for high office with the backing of his masters. And that lawyer passed the plate on Sunday in a great cathedral and carried the degree of a great university.

He was a “smart man”—so smart he could cheat the law and still respect the law, after the fashion of some smart lawyers. And so the eight-hour-day law then became as dead in that section of Denver as prohibition is now.

My excursions into the “swamp lands” then had brought me up against a new kind of “anarchy”—not the anarchy of the unkempt bomb thrower but the broadcloth anarchy of the respectables and the patriots. For no man was more patriotic, more respectable, than this particular “smart lawyer.” No man was held in higher esteem by judges and the eminent leaders of the bar associations.

And when I named him from platform after platform and cart tail after cart tail in one of the ten heated campaigns through which I won my right to continue serving in the juvenile court, it was not he, but I, who lost in popularity with church and bar, university and chamber of commerce.

Of what consequence was the murder of fathers and the sacrifice of little children on the altar of greed? I was a dangerous man, knowing nothing of the responsibilities and proper place of a judge.

For they did not want a “doctor” in the juvenile court—and least of all a “doctor” gone to war!

They wanted a judge who belonged to the proper set, the most important clubs, went to the conventional church—a judge who was right with the system’s major injustices to which his selfish cowardice was so often a contributor. They preferred their ignoble life of ease. They refused to go to war lest they break with the “system” we called government to which they so often owed their jobs—their chief concern.

## CHAPTER V

## TWO LUNCHEONS AND MY GUESTS

I PAUSE here in this general discussion of the juvenile court technique to clarify further my attitude toward crime and criminals.

Throughout the development of our court work I was constantly being berated and damned for my "sympathy for the criminal." The truth is, our work was primarily in the interest of society rather than of the criminal but in our efforts on behalf of society we discovered and made use of methods that were, generally speaking, also in the interest of the criminal—as the individual guilty of anti-social conduct was called.

As I have explained in a previous chapter, the world, for me, had ceased to be a place inhabited by "good" people and "bad" people. Philosophically speaking, as Lincoln Steffens first best taught me, we had separated people from their conduct, realizing that the latter proceeded from a wide variety of causes—often outside the individual. We began to deal, then, with those causes, whether inside or outside the individual, and this brought us sharply against the futility and folly of mere "punishment."

Yes, I did "sympathize with criminals," but in admitting the truth of the accusation I extended the scope of the term, "criminals," far beyond that given it by my hostile critics.

I included in it the major, as well as the lesser, criminals. And I tried—and generally succeeded, however great the difficulty at times—to limit my hate to the things the major criminals did as I limited it to the things the lesser criminals did.

Of course, in being firm and yet kind, I found it necessary at times to send both types of criminals to jail—in order to keep society "safe" from their "anti-social conduct." And, curiously enough, the lesser criminals could often be mentally and morally "conditioned," as we shall see later, to go to jails or reformatories alone while the major criminals never would go alone. Instead, they went, with their high-priced lawyers, to the supreme court and that accommodating

tribunal generally let them off altogether! So that in dealing with the major criminals we never had an opportunity to use the "psychology" of the new approach which our work in the juvenile court had proved so effective with the lesser criminals.

Let me make plain who these major and lesser criminals were.

As I went on with my work I began to see that the really dangerous enemies of society were not the pick-pockets, plug-uglies, thieves and burglars from the stupid and ignorant classes whose schooling was generally in the gutters, in the streets, amidst the poverty of hopeless homes and the entire hopeless environment into which society had tossed them largely as victims.

The really dangerous criminals were those possessed of the intellectual cunning that had come to them from schools, universities, churches and the environment of the utterly indifferent but rich and respectable members of the community.

These were the people who protected the underworld and the gamblers who in turn preyed upon and helped to make the stupid criminals. These were the people who brought up political machines and bosses and controlled district attorneys and judges on the bench in order that they might make way with public utility franchises or other privileges on their own terms through fraudulent elections brought and paid for in the name of democracy, the constitution and the flag. These were the people who, after they had stolen their franchises, picked the pockets of the common people every time the gas or electric light or power was turned on—while their cleverest crooks, in judicial decisions and addresses before Masonic bodies, churches, chambers of commerce and other gatherings of the eminently respectable, indulged in platitudinous oratory and a hysteria of flag-waving and "100 per cent Americanism."

These were the dangerous people in every conflict between justice and privilege, between humanity and the profiteers. They were the men whose crimes made countless thousands mourn . . . not the thugs and petty thieves whom they so roundly denounced and turned over to the inspection of their loudly lauded crime commissions.

As I studied these major and lesser criminals—these

wholesale and retail robbers—and observed the operations of justice among them I sometimes felt like suggesting that we empty the jails altogether in celebration of the fact that the bandits who robbed almost everybody never got in them at all.

Or better still, that we might abolish the courts as the agency for filling the jails but, in order that the crime commissions might still have something to do, keep and fill the jails by some such more even-handed method of justice as this:

Let all the adults of the state participate in an annual drawing with black straws and white straws, in which the black straws would about equal the capacity of the prison. Let those who drew the black straws take their places behind the bars in arrows or stripes, as the fashion might be.

Then let all the members of the crime commission and any similarly minded individual who drew white straws visit the jails and make up their studies from observations of the inmates.

In that way some highly entertaining conclusions might be reached that would come about as near solving the "crime problem" as do most of the reports made by the crime commissions to-day. These experts are generally mostly lacking in courage or understanding of what we call "crime."

I hope I am not misunderstood. If I jest at the injustice of jails, it is out of no spirit of vindictiveness. I am by no means arguing in favour of putting all the major criminals behind prison bars for I doubt very much if either the major criminals or society would be benefited one whit by such a programme.

The remedy—if there be one—lies in an entirely different direction, as we shall see later.

I had many friends among these big crooks and criminals and I did not wish them personal harm. I had lunched and dined with them at their clubs on terms of intimacy and I had found them an engaging lot—so many "bad boys" revelling in the anti-social opportunities of their unfortunate environments.

I remember well the luncheon with one of these major criminals in the bankers' club of a great city, where he had established his office, far from Denver, his earlier scene of operations.



He proved a genial and charming host. He at least believed he was genuinely interested in youth and he had magnanimously forgiven me for once trying, as a judge, to send him to jail after a \$50,000,000 robbery through the corruption of our local politics by his great utility corporation. I had bawled him out in our book, *The Beast and the Jungle*, and he now hastened to assure me that not only were our charges true but the half had not been told.

There he was, a great captain of industry, sitting opposite me, proud of his achievements, which had been widely exploited in the *American Magazine* for the emulation of youth. A great university had conferred a degree upon him. A fashionable church had made him a member of its "board." I recalled the time when he had "passed the plate" on Sunday back in Denver. I also recalled that at the same time he was manufacturing "tax-paying" elector dummies to vote fraudulently for his own proposal to the people to give him franchise power to tax them for necessities of life on his own terms, even though it meant wholesale robbery. . . . Yet the fact that he picked the pockets of everybody in Denver every time they turned on the light or power through his part in the broadcloth anarchy called "the government" was to him reason for profound satisfaction.

He told me—to use his own graphic terms—"what damn fools the people were!" In order to exploit the people, as he explained it, all he and his friends had had to do was to control the party organization whose particular label—sometimes Republican, sometimes Democratic—was the fetish that the majority of the herd-minded worshipped.

That was the way it had to be done, he said. The fact that the prices paid to the public utility by the "damn fool people"—and how he laughed when he said it—were several times what they were in countries where the people were not such "damn fools" was only one of the deliciously-humorous features of the situation.

As he rambled amiably on over the spotless linen and glistening silverware, the conspiracy of the major criminals against society unrolled before me in all its magnitude. It was an appalling picture of knavery. And yet, despite the protest within me, I was able to preserve the amenities. There was something fascinating about the psychology of

these big crooks—something which I tried to understand, even if I could not sympathize with, or endorse, it.

We parted at the bankers' club as friends.

Now I am sure no one ever would have condemned me for my luncheon engagement with this major criminal. It was a mere incident of a perfectly safe and sane social life. It was, indeed, a common experience for men in public office. But when I extended my social relationship to the lesser criminals in Denver—as I frequently did, in the interest of a better mutual understanding—a howl went up from the "better element"—yes, even from the club of which the major criminal with whom I lunched in an outside city was a member. I was on "dangerous ground"—I was conducting "ridiculous experiments with criminals."

I can still remember how the staid and sober elements of the community denounced me for one of the earliest of these "ridiculous experiments."

The deputy of a district attorney who had been put on a party ticket by such heads of our public utility corporations as the luncheon guest at the bankers' club I have just referred to and who, through the corruption of government, had robbed the people of Denver of millions, was prosecuting two ordinary burglars in my court.

The burglars were just kids—barely nineteen years of age.

In the midst of the trial we had adjourned for a short noon lunch period. The deputy sheriff having charge of the "burglars" complained that he could not return them to the west side jail for their lunch and be back in court with them by the time I had set for opening the afternoon session.

I was a judge, and under the formal criminal procedure of those early days there was an impassable gulf between the judge on the bench and the prisoner at the bar—a gulf that prevented the judge from knowing anything about the prisoner except the thing the prisoner was accused of doing, if indeed he was allowed to know that.

Well, I studied these two young burglars and a novel idea took possession of me. They were fine physical specimens. I knew they were not half so bad or dangerous as some of the eminent respectables with whom I had dined, despite the fact that these latter gentlemen were never in the slightest danger of jails.

Why shouldn't I then dine with them? And so, yielding to the impulse of the moment, I said:

"Perhaps, Mr. District Attorney and Mr. Sheriff, you would accept my invitation to luncheon?"

"But what will we do with the prisoners?" asked the deputy sheriff.

"They are included in the invitation," I replied.

Whatever may have been the surprise of the officers, they agreed to join me. So there was nothing else to do but bring the burglars along as the respected guests of the judge. After all, in the theory of the law they were not criminals—they were innocent until proven guilty.

As we started across the street to the lunch place an embarrassing question was raised. How were the burglars to be handled? Surely the courtesies of the host should not tolerate the handcuffing of his guests.

But the deputy sheriff was anxious and it was only on my promise to assume full responsibility for the custody of the prisoners that he consented to bring them with us without the customary restraints.

When we arrived at the restaurant he was still apparently dubious. For he seated himself between the prisoners and me, so as to form a convenient bumper between us. At least there was to be no danger of the burglars either attacking or corrupting the judge!

It was an interesting and enjoyable occasion—though not so free from the embarrassments of self-consciousness as the lunch with my friend, the great corporation magnate and major criminal, which I have already described. My friend knew even at the time of his offence that he was perfectly safe from the judges and their courts. Hadn't he often dined with them at the club? And, of course, he had nothing to fear from me, for all his possible crimes were now beyond my jurisdiction.

But my two burglars were on no such sure ground. They had never lunched with me or with any other judge before.

Nevertheless, in the easy banter of general conversation, we managed to emerge from the camouflage of our respective court rôles, the deputy sheriff in more gingerly fashion than the rest of us. The burglars gradually thawed out until we forgot to think of them as "defendants" in a "criminal

trial" and began to look upon them as the real human beings they later proved to be.

I was delighted, too, with the attitude of the deputy district attorney, a genial, warm-hearted, kindly man except when prosecuting this type of lesser criminals. Intrigued by the novelty and humour of the situation, he chucked his dignity and "responsibilities" for the moment and chatted amiably with the prisoners at the lunch table—if not at the bar.

I felt like congratulating myself on the success of another of my "ridiculous experiments" as I walked to the cashier's desk at the conclusion of the meal with the two public officials.

The prisoners, who had been allowed to tarry a bit at the table, rejoined us and the party proceeded to the sidewalk while I paid the bill. As I turned to leave, a waiter tapped me on the shoulder. A bowl of sugar and considerable tableware had disappeared, he informed me!

The missing articles were, of course, recovered. Accused, my prisoner guests delivered them up promptly, though with sheepish glances. The joke was on the judge—as my more respectable guests would not forget! But there were no "escapes" nor attempted "escapes" and the trial proceeded to an orderly conclusion.

Our guests were found guilty.

Later, in resisting their plea for probation, the deputy district attorney cited the incident of the taking of the contents of the sugar bowl and the tableware.

And I had to reproach them for their lack of proper appreciation of my hospitality, though I granted them probation.

It was not until the young prisoners had justified their probation by their most exemplary records and I was issuing an order discharging them altogether from the court that I found the probable explanation of their taking of the sugar bowl and the tableware.

One of the boys, whom I had always liked for his quick sense of humour, said he regretted that he had never quite had a chance to explain the incident that had embarrassed me more than it had them.

"You see, Judge," he said, "we never really meant to swipe those things but that damn deputy sheriff seemed to

be so scared that we was going to do something that we shouldn't do that we just hated to disappoint him. So we just swiped that stuff as a souvenir of them unusual precedents you was settin'.

"But that damn waiter gave us away before we could do what we intended to do: cough up the things as a damn good joke on the deputy when we got back to court and turn 'em over to you!"

Both boys became good average citizens. . . .

I am sure they would have been among the last persons in the world to take part in election frauds for the gaining of franchises in which my genial and charming host at the club had corrupted even the son of a Bishop!

## CHAPTER VI

### CHAINS UNSEEN

IN the early days of my court work, during one of my campaigns all over the United States in behalf of juvenile courts and home schools in place of jails for children, I made an inspection of the jails of several large cities of the East. One of them I shall never forget.

It was in a large Eastern city pretending much, yet I found young boys from ten to sixteen years old allowed to mingle indiscriminately with adult criminals of every age and type, in a sort of "bull pen."

And the boys wore chains about their thighs and legs—little dog chains that passed around their knees, forming a hobble to prevent swift locomotion.

"Why do you put chains on these boys?" I asked the warden.

"Well," he answered, "our jail is much too crowded and we have to make use of all this space"—and he indicated the "bull pen." "We have to take the prisoners from here to their meals across a court that's not very well protected and sometimes they try to escape.

"Now you can shoot a man for that sort of thing, but not a kid—unless you want to make trouble for yourself.

"We winged one of those little devils once when he tried to get away. The papers got hold of it and, God, how they

howled. You'd have thought we had murdered the kid instead of only wounding him.

"It was the only way we could teach 'em a lesson but it got too dangerous. So we decided to put chains on 'em. They can't get very far now before we pick 'em up, and without having to plug 'em."

"Then," I repeated, "you wouldn't shoot one of these boys if he tried to run away?"

"Oh, no," he replied, "the chains avoid all that."

"But suppose one of them should be without chains?"

"Well," he answered, "I guess we couldn't plug him. We'd just have to take a chance on his escape."

Almost at this moment a thin, white-faced boy of twelve, furtive and alarmed, paused near us and stared at me. On the impulse of the moment I engaged him in conversation, concluding with this rebellious advice:

"Sonny, if you ever get rid of those chains and have a chance to break away from here I hope you will just scoot—the warden says he can't plug you."

I smiled as I noticed the bewilderment on the faces of the officer and the boy.

"Did you really mean it?" was what I got from the boy.

"Well, you must be the hell of a judge, encouraging kids in lawlessness," was what I am sure I got from that officer. . . .

Everywhere in those early days in my campaigns for change great reliance was placed on the restraints of violence and external force. When first visiting our boys' reform school in Colorado, before becoming Judge of the Juvenile Court the old "Oregon boot" was still in use. This was a heavy iron hobble that clasped about the boy's ankles in a way that made escape difficult. And I was shocked to learn of such brutal customs as bringing a recalcitrant boy out before the company of his companions and having him roundly horsewhipped or of subjecting him to the water cure or some other "third degree" practice.

And, of course, in every jail and reformatory cells and iron bars were still in use, the extent varying with the progress of the particular institution.

There were no state or federal government statistics to which we might have access at that time, but from such data as I was able to collect I concluded that at least 60,000 boys and from 15,000 to 20,000 girls were brought to the jails

and prisons of this country every year. Of course, they were not all kept there for great lengths of time but they should not have been there at all. For none of the jails were building character and most of them were veritable schools for crime.

My first reaction to all these discoveries was to avoid sending youths to these penal and "reform" institutions whenever I could. I turned for relief to the probation system, making insistent demands upon the grudging authorities for additional probation officers and equipment.

I became an ardent defender of the new system for it brought good results whenever it was wisely applied, despite the carping criticisms of eminent respectables who in those early days furnished the chief opposition to it.

I recall that a leading morning newspaper of that time, since defunct, which catered to its conservative readers by opposing any one supposed to be "radical," carried a sensational front-page story about one of my young probationers who was caught in a repetition of his original offence. It was all played as a sample of the "danger of Lindsey's work."

But an officer with the rare gift of thinking and the desire, at that time unusual, to do me justice sent me a copy of a letter he had mailed to the newspaper, pointing out that the youth in question was only one of a hundred boys that he personally knew I had placed on probation. Since so much had been said about the one boy who had gone wrong, his letter concluded, why not say something about the ninety-nine who went right?

In the midst of the unreasoning criticisms the grand jury began one of its investigations of my "lawlessness." About the same time there had appeared in the press an account of a jail break led by a desperate youth who had rounded up a dangerous gang that was finally apprehended with a dozen or more stolen automobiles to its discredit.

One of the grand jurors called my attention to the circumstance, saying that he understood this youth had been one of my probationers. Assuming his statement was true and without giving me a chance to explain, he concluded:

"If that reckless young crook had only been sent to a reformatory when he was convicted in your court, instead of being put on probation, there would have been no dozen automobiles stolen and I would not have lost my car."

I happened to remember that particular case very well. I had been rather unduly influenced at the time by a police officer whom I greatly respected into sending that boy with an officer to the state reformatory without any probation at all. And I told the juror the facts, adding that I could recall a dozen boys whom, for similar offences, I had placed on probation and not one of whom had since stolen an automobile.

We had sent that boy to a penal institution, I pointed out, and here he was within three weeks of his release from that institution the leader of a law-breaking gang made up almost entirely of boys who, like himself, had been in prison.

Under the precise plan of the hostile juror we had succeeded only in making of the youth a more dangerous marauder and society his more certain victim. . . .

Save for institutions dominated here and there by fine personalities and a system of education and useful work, the jails and reformatories, then, were not doing their work. I began to make vigorous demands throughout the entire country for home schools to take their place where the need of detention was indicated.

We had the first institution of this kind in the nation, I believe, in Denver nearly thirty years ago. It was presided over by a former high school principal and his wife and possessed the combined advantages of a home and school. Detained there, the young offender came immediately under the influence of a first-class teacher assigned to the work by the school board instead of the old-time guard, sometimes brutal, generally incompetent, who had to be "taken care of" between elections by the politicians.

In our home schools the boys had clean, wholesome quarters. They shared with the superintendent, his wife and the teacher the meal hours in the dining room. They had wholesome play. They had special tutoring in their studies. The result was that when they returned to the public school they found themselves not only not handicapped by their experience but in many cases actually in advance of their class.

It was all in line with my plan for the state to help and not to hurt.

In the early fight that I carried on for these changes I had the enthusiastic support of Col. Theodore Roosevelt, then President of the United States. Shortly after he had succeeded



to the presidency he had read of my struggles in Denver and when I stopped at Washington to see him during my tour of the Eastern jails I found him an eager listener.

When I told him the story of the boys I had found in chains he fairly boiled with indignation.

He called in his secretary and made note of the incident, explaining that he had pursued a similar course with regard to other things he had heard I was doing. In this way, he said, he gathered material for messages to Congress demanding changes in the laws for the protection of children in the District of Columbia. He hoped in time, he continued, to have the district, so far as child welfare was concerned, a model furnished by the national government for every city and state in the land.

Not long afterwards, I may say, I was delighted with one of the Colonel's messages to Congress sizzling with demands for such legislation as I was then advocating. It even included a demand for a children's bureau, a bill for which was first formulated in Denver and introduced in Congress in 1902 by our good congressman, John F. Shaffroth.

Well, it was during these local and national disclosures and the uproar that followed them that I began to formulate in my own mind an entirely new strategy in dealing with delinquent youth. I became more and more convinced that, with the right kind of people in the work, we could accomplish far more than we had hitherto accomplished with youth—and indeed, in most cases, with adults, whose conduct was anti-social—if we resorted to forces other than those of mere violence.

Chains unseen—why not give them a trial in place of those of brass and iron, which had so signally failed? Why not rely for once on the inner restraints of the spirit? They were there if we could only help people bring them out.

It was out of such a background of experience that I began to consider an experiment that was to challenge the attention of the world as perhaps few of our other procedures in the court work did—an experiment whose audacity threw the timid and traditional-minded into paroxysms of fear and made me the target of the conventional upholders of "law and order" everywhere in the nation.

If we had to send them to places of artificial restraint, even jails and reformatories, why not send them alone, I

asked myself. What stronger proof could I offer to the world of the power of those inner restraints, those forces other than violence, in which I had come to believe?

I discussed the idea with some well-meaning friends but they immediately vetoed it as dangerous. Nevertheless, I was determined to put it to the test. And, because that seemed to be the least difficult (I afterward found this a mistake), I decided to start with the smaller boys who had to be committed to the detention schools, and the then so-called reform schools.

The very first "culprit" upon whom I tried the experiment, I remember, was a little fellow about twelve years of age. The institution to which he was being sent was located almost on the outskirts of the city. I was sure, I told him before he set forth, that he could be trusted to go alone and "on his honour."

He ran away. The circumstances could not be concealed from the officer who had brought the boy to court in the first place, and there was much merriment around police headquarters at my expense.

I remember the officer said to me, after he had recovered from his gloat of satisfaction over the failure of my experiment:

"I'll catch that little devil and I'll see that he gets what's coming to him—if I have to break his damned neck. You bet I will—no matter what it costs him."

It was not hard to understand the officer's attitude. The youth had been considered a slippery little rascal and had been the source of much annoyance to the police through a rather serious type of juvenile burglaries.

But I could not approve the policeman's programme. I thought a moment and, still fighting for the truth there was in the system I had conceived, I said:

"No, you are wrong. Perhaps you will have to catch him this time. But bring him back to ME and I'LL teach him how to be trusted no matter what it costs ME!"

When the little rascal was recovered and brought back to my court by the officer, I found he was fired with hate, not for me, but for the officer. His attitude toward me, at first, was one of sham and pretence.

I was learning from the boy—again and again in those days I found that the boys unconsciously taught me more than I could teach them and I often wondered why the lessons

escaped most of the officers I met. Why couldn't they see how violence projected violence, hate projected hate?

Well, here the lesson was plain. How could I turn it to account on behalf of both the youth and the state and, indeed, as I was to do in later years, on behalf of the officer himself? (For I converted many of them to my "theories" and they became my friends along with the kids.)

"Jimmy," I said, "I am very sorry for you. The officer is sure you can't be trusted because you ran away. . . . But I think you can. I know you ran away because of the bad things you let get the best of you."

And then I made it plain to Jimmy that however much I liked him I had been compelled to send him to the detention school—a mild name for the "kids' jail," as it was known to Jimmy and his harum-scarum young friends.

He was penitent and a little later when he was alone with me the explanation came out through his tears.

"You see, Judge," he said, "I was going to do just what you tolt me but on the way out there I passed that big field where the kids was playing ball. You know dhat's wher our gang lives and, Gee Whizz, I just couldn't pass dhe kids, I just couldn't, Judge. And before I knowed it I was up on my feet and I had ditched that street car. And then, when I remembered what you tolt me, I just got scared and I run home. And then, when the old man came home, I was under the bed scared to death, knowing he'd beat me up if he found me.

"I knowed I had missed my chance but I started for the street again when that fly cop comes along and pinches me on the spot. Gee, I thinks, what a fool I has been to t'row down dhe judge!

"Dhe cop gives me a cussing and tells me he'll fix me dhis time. So he t'rows me in before I knows it and then I sees I ain't got no yell."

"I am glad you learned that lesson for yourself, Jimmy," I told him. "You think the cop wants to hurt you. But I hope you know I really want to help you. I really believe that you can be trusted—I think you were just scared."

And, as in so many other cases, with this approach of tolerance and understanding, of confidence in the good rather than the evil there was in Jimmy, he rose magnificently to the occasion.

"Gee, Judge," he begged, "can't you give me another chance? Just give me the writ and I'll show 'em—I'll show 'em, Judge. I'll show that cop I can be trusted."

"Of course, you will, Jimmy," I answered. "I know you will."

How little I knew that it was the beginning of great events in a work that was to be known all over the world. Consciously or subconsciously I must have been a bit apprehensive in those early days. For I stood at the window there alone in my chambers. I saw little Jimmy descend the court house steps—he, too, alone—with his commitment papers in his own pocket—as he emerged from the great building out into the streets of the crowded city to join me in the great adventure of "The Dangerous Life."

True to his word, he braved all the temptations. He arrived alone. His fears had been conquered, his pride had triumphed. The papers were returned with "executed" in the small handwriting of little Jimmy: "Dear Judge, I am here—and I comes all by myself. Be sure and tell that cop."

I could write a book, much less a chapter, on the more than a thousand boys with whom, in being firm and yet kind, I sent alone to the detention school within the city and to the more distant reformatories in and beyond the mountains.

Wherein lay the secret of these successful commitments?

It seems to me it was to be found in the application of sound principles of psychology. In handling these youths I soon found I was dealing with bundles of human qualities, pride, loyalty, ambition, the desire to please one whom they trusted and respected, the desire to be appreciated and praised when they knew there was an opportunity for appreciation and praise. And I learned that these were factors more powerful than handcuffs and chains.

It was officially shown at one of the usual grand jury investigations to which my precedent-shattering work was subjected that while the police had lost several dozen boys whom they were taking to state institutions in irons and handcuffs, very few of whom they ever recaptured, not more than six youths whom I had sent alone in the same period had run away, and these were the little fellows whom I had supposed the easiest thus to deal with!

It was further shown that with but one exception all of these runaways had come back to me of their own accord

and apologized for the fears that "got 'em" and then again taken their own papers successfully to the institution on a second trial.

And even in the case of this exception, as the grand jury investigation established, the boy was unquestionably looking for a chance to return to court when he was apprehended by the officer who was going to see to it that he was sent up—"if I have to break his damned neck." And since that boy afterwards did go alone—it may be fairly said by this method of restraint from within, rather than from without, we never lost a single "prisoner."

But the grand jury investigation, searching as it was, failed to dry up the opposition to my "unheard-of experimenting with criminals." While there was less open criticism, Dame Rumour continued her under-cover campaign.

"Lindsey pays the conductors to watch the kids——" when the truth, of course, was that no conductor ever knew that a single one of his passengers was on his way to prison.

"Ah, but Lindsey pays these kids—he pays them to go!"

Or: "Lindsey hypnotizes 'em."

Lindsey does this and Lindsey does that—everything but the truth of what he did and why he did it.

But the grand jury investigation had disclosed the real secret of the chief opposition—it was money—that great American god—money.

In those days we had the "fee system." The sheriff, who was bitterly opposed to my "experiments," was paid so much per man by the county for transporting prisoners to the various penal institutions and for their feed and care on the way. And he was paid handsomely. It was said that because of these and other perquisites his office at one time during the days of the "fee system" was worth not less than \$50,000 a year! The fee system must not be destroyed. It meant "taking care" of dozens of hangers-on among the politicians who were useful at election times to the system and the system's state. It was all a vicious circle. No wonder I found myself wrestling within it. And little wonder that they had no faith in "chains unseen"!

I remember they used to say in those early days: "Well, Lindsey can talk all he wants to about the psychology of these other forces he banks on in sending them alone. But remember it's the little kids he's been dealing with this way. What

about these reckless daredevil bandits? Huh, you don't think, do you, that they're going to jail by themselves?"

But they did—and proved that the forces that worked successfully with "little kids" worked equally successfully with the older bandits. In fact I believe it worked even better with many of them.

He was about eighteen—that daredevil kid—when I first met him in his iron cell under a dim light in the old jail. He had already escaped from that jail twice, to the amazement of the police. He had just been a fugitive from justice, hunted like a dog.

"He's a killer, that kid," an old-time officer had said, scowling at me. "Don't take any chances with him, for you'll fail."

One midnight after his escape, a red light was seen to disappear from an excavation it protected in the street. Following the light down an alley, an officer came upon the fugitive as he was about to pick a lock. Burglar!

"Halt!" commanded the officer, when quicker than a flash the fugitive dashed the red light in his face. Stunned and dazed by this unexpected turn of events, the officer opened-fire. Then followed one of those gun battles of "The Daredevil Kid." He was winged and wounded, captured and humiliated.

That night I found him at police headquarters, back in his iron cell, strapped to a bench in one phase of the old-time third degree. As I stood there by the iron cage an officer towered above the stricken youth, demanding loudly that he tell the names of his pals, only to be met with defiant silence.

Released from his chains as I entered his cage, he stood up and eyed me defiantly. As I faced him he suddenly blurted out: "I ain't no snitch!"

"Bully for you, Kid," I said, quietly, "neither am I!"

And that night I was before his bench there in his iron cell—long before he ever appeared before mine. Literally, he was the judge: he was judging me, judging the cops, judging us all.

I knew that years before he had been driven by a drunken father from a home in the dark places of a well-known street in Chicago. He had been a hobo, a bum, and now he was a burglar and a "killer."

His mother and sister lived in Denver and the gentleness of his mother and the sweetness of his sister, who held a fine place in a big department store, gave no indications of the wickedness of the killer.

His judgment as to me at first was that the "cussed cops" were playing some new trick on him and had brought in a plain clothes man to play the trick. But I succeeded in allaying his suspicions. I invited him to come and see me . . . embarrassing as it was to come in chains—with an official guard.

There were a number of such visits but one in particular stands out in my memory. Lawless youths in their late teens and just under twenty-one years of age were frequently tried before me. I had made it a rule that no youth should be brought handcuffed to my chambers and the rule was generally respected because I agreed to accept full responsibility in case of an escape. But on that cold, bleak night in December that I can never forget the officer brought the boy to my chambers handcuffed.

It was only upon my insistence that he was released from his chains.

"He ain't no baby criminal, Judge," the officer cautioned. "You know his record. If I leave him here without these"—holding up the cuffs—"he'll be down that fire escape quicker than a cat." There was a fire escape just off the ledge beyond my window.

I told the officer he might return to the jail with his chains, assuring him I would be responsible for the prisoner. A bit chagrined, he acted on my order but not without "a dirty look" as he went to the window, closed it and clamped it down with a lock that held it fast. All of which, from my viewpoint, was bad psychology.

I watched the youth curiously as he sat there, his eyes following the departing officer. It was really true—I must have trusted him! We were alone together.

"Son," I began quietly, "I am in this fight for you, not against you. I want to help you but I can't help any kid unless he's willing to help himself. I can't save you—you've got to do that. You've got a fine mother and a good sister. You owe something to them, don't you think?"

"There are jails everywhere for the fellow that persists in being a crook and that is where he belongs if he keeps up

that sort of thing. But I think you've got a lot of good in you. It's up to you to bring it out.

"Did you hear what that officer said—that if he left you here alone without those chains you'd be down that fire escape quicker than a cat? He may be right and I may be wrong. But there are other chains beside iron chains and, if you're going to bring out the good that's in you, you and not the officer have got to put them on. But we've had talks before, down there in your cell, and here. I understand you and by now you should understand me."

I rose, stepped to the window, unlocked it, threw it up as far as it would go.

"There is the fire escape," I continued quietly as I pointed to it beyond the ledge. "Go now and you'll have hours and hours the best of the officers. If you're not worth helping, the sooner I know it the better. It's up to you—to run away, if you think it's square."

He started with a creepy sort of crouch to the open window. There he paused, looking out across the court house lawn to the lighted streets beyond where liberty was sweet and life dear to that "daredevil kid." I did not know until afterwards that he, with searching glances, was trying to confirm his suspicion that the accursed cop had not obeyed my order to return to the jail beyond the creek on the other side of the city but, instead, suspecting my "experiments," was lurking in the yard to intercept him if he descended the fire escape—"like a cat."

I confess it was an ~~anxious~~ anxious moment. I thought of what police headquarters would say if I lost that "daredevil kid" and especially of what the newspaper that loved me so would add to its scornful comments on "those experiments with dangerous criminals."

Suddenly he turned and, lifting his hand to the upraised window sash, crashed it down with a bang that almost shook the panes from their places. Then with eyes searching my face he stepped over to my table and blurted out:

"Judge, I won't go. I'll stay with you and fool that damn cop."

And he did.

For all alone and unattended, without any officer or any chains, except those unseen, that night he went back through the crowded city across the creek to the west side jail—the



jail from whence he had escaped in spite of iron chains and stone walls.

The next morning a captain of police came to see me.

"Judge," he said, "that was a very remarkable thing you did last night. The kid got back to jail all right. It was nearly midnight and when the night watch answered his call and saw him in the shadows he thought he was a ghost and nearly fell dead."

And the captain laughed.

"But," he continued, "don't take any more chances with that kid. His case is too notorious for you to fail—and believe me you will fail if you keep on taking chances with him."

"But why will I fail, Captain?" I asked.

"Don't you know," he shot back, "that kid has been in jail thirteen times?"

"Well, Captain," I said, "didn't it ever occur to you that the jail had failed thirteen times?"

For a moment he was silent. Then he replied frankly, "No, I hadn't thought of it that way."

"I have thought of it much, Captain," I said, "and some day we'll find there are finer, wiser, and more helpful forces than jails and chains."

He was sceptical, regarding me, perhaps, as a bit mad on a subject about which he knew much and I knew nothing—though I may say that in after years he became one of my strongest supporters despite his inability to explain my success with any other statement than "The judge must hypnotize them."

It was a very definite, concrete situation that disturbed my friend, the captain.

"You see," he explained, "if you go too far with that kid, we'll lose our chance to arrest that gang. He's the leader and to get the rest of them, we've got to keep *him* behind the bars. . . ."

That night I stepped in to see my old friend, the chief of police. He was a kind-hearted man and had often said to me he would as soon break a boy's neck as send him to a reformatory. "But, then," he would add, "they give us nothing else to do, nowhere else to send them, no other remedy."

I found the chief much concerned over the gang, which had been accused among other things of stealing several bicycles—it was in the days before automobiles were in such

general use. My idea was that, if the boys were really guilty, I would put them to work when I got them and on intensive probation, wisely directed, see that through honest toil they earned the money to pay back the full value of the bicycles. My plan, primarily, concerned boys not bicycles.

But the chief continued to talk about those stolen bicycles.

"Chief," I finally said, "don't you think it's just as important to save those boys as to save the bicycles?"

He agreed that it was and promised to co-operate with me in whatever I should do with the "daredevil kid."

It was very much like the case of the little kids—the "baby criminals," as the police called them in those days. There were appeals made to loyalty, pride, interest, ambition, and all without preachment or platitude. Of course, the "daredevil kid" would try to get in touch with his gang. But I had trusted him. He was now abroad again on my own orders.

One night I was alone at the court house as I so often was. There was a tapping at my chambers' door. To the command, "Come in," the door opened. The ceiling light streamed into the faces of the gang. There were five or six of them as I motioned them to come in. There they were—"Lawless Youth"—aged about eighteen or nineteen and quite typical. Leader that he was, the "daredevil kid" commanded:

"Now, kids, sit down here and snitch up on yourselves. For, I leave it to the judge, I ain't snitched on nobody——" and he hadn't.

It was a most interesting conversation, lasting until the midnight hours, with the judge and the burglars there alone, chatting, laughing, learning about life. We parted as friends. I reported to my friend, the chief, expressing the hope that the officers would lay off, as he had promised. Still a bit sceptical, he at first insisted that the "thieves" ought to be rounded up. We were playing with fire, he thought. The bicycles and other things, perhaps, were more important than the boys, for he still talked about them.

But I prevailed and in time, through intensive probation, the bicycles were paid for and all of the boys went straight, but one. Because one of the five or six boys involved skipped out, however, you would have thought from the way the police talked the whole "experiment" was a failure.

But the end was not yet. A captain of police had declared he would capture the missing burglar if it took all winter.

Winter passed and spring came with no capture. Our "daredevil kid" had pleased us—and his mother and sister—beyond all expectations by sticking to his job but, in the spring, the "go" fever got him, as he confessed to me.

Now I have often cured a runaway boy by letting him have a good runaway "under the proper auspices." And there was Billy, the fugitive, still missing.

"Son," I said to the daredevil kid, "where do you think Billy is?"

He looked at me with pained surprise.

"Judge," he asked earnestly, "would you have me be a snitch cop?"

"Certainly not," I replied, "but unless we bring Billy, the fugitive, back the cops are likely to get him and they may take him to another court. Then he'll be lost to us—I have seen that done before.

"Suppose"—and I looked the "daredevil kid" straight in the face—"suppose you tell me where he is. I'll get him to return here and we'll give him one more chance."

That appealed to him. As long as I was the judge in the case he felt he was safe. He confided to me that Billy, the fugitive, was in Mexico, across the line from El Paso. How he knew I did not insist on his telling.

Well, our plan was that he should go "on a bum" to Mexico with the hope of inducing the fugitive to return. He was for it enthusiastically but he scorned the suggestion that I pay his way. He wanted the glorious adventure of really beating his way to Mexico and back, though he did finally consent to take a small sum of money and a letter to be used in case of emergency.

Within less than three weeks the "daredevil kid" entered my chambers one evening with Billy, the fugitive. We talked it over into the far night. . . .

We got a job for Billy on his uncle's farm near Denver. In order to prevent further interference by the police it seemed best to report to the chief.

"Son," I said to the "daredevil kid" one day, "you step in and see my friend, the chief, and tell him to lay off Billy. Tell him Billy's under my direct care, that we can guarantee to him if there's another violation, the case shall be his—but, until then, to lay off."

With a pride that was pardonable, as it seemed to me, the

boy walked out of my chambers on his way to the office of the chief of police.

"He reported all right," the chief told me later, "and I guess he put one over on me. After all the efforts of the police had failed I confess I was chagrined to hear that report. So on the spur of the moment I said: 'Well, Kid, you know it takes a crook to catch a crook!' Bowing low with a devilish cunning in his smiling eyes he took leave of me gracefully with this shot: 'And that's the reason you's the chief of police!'"

As I said before, they all turned out well, became good citizens, but one. He slipped back. He was a defective, before the days when we had so much of the psychiatrist and the specialist to deal with him. In the years that have passed, my trail and the gang's have frequently crossed but never more dramatically than in those last days of May, 1918, when with a small party I had been visiting the Aisne front of the bloody fields of France. Returning to Paris, we had reached Château-Thierry when word came that our lines on that front had broken and the Germans were advancing like the waves of the sea, Paris, their goal, almost in sight. Under the very fire of the enemy's guns we left Château-Thierry.

But there the Germans were checked. From across the fields there were heard that day perhaps the most cheering words that ever fell upon mortal ears, "The Yanks are coming, the Yanks are coming!" Led by the imperishable marines, our boys closed the gap that threatened not only France but all that we had sacrificed for.

And in the vanguard of those marines, as two of the bravest of the brave, were the "daredevil kid" and his pal of the old gang that came to my court chambers in the old days in Denver.

The "daredevil kid" was wounded in that charge that he had been taught to believe was to "save the world for democracy." He gave up his strength, almost his very life in the last full measure of devotion. A short time after that great adventure I stood by his broken body at Neuilly Hospital, near Paris. There he was no longer the burglar, no longer the hunted fugitive, no longer the hated criminal of those old police days but a hero who had made his sacrifice, in the service of his country on the fields of France—and if I had ever before doubted I could not doubt then that

there are chains other than those of iron, restraints other than hate and fear, that may be used more successfully to save human beings—who knows?—to save the world.

## CHAPTER VII

### IN WHICH I PRACTICE "HYPNOTISM!"

UNDENIABLY, it worked—this "experiment" of "sending them alone." And the more daredevil and reckless they were in the abundance of youth's wholesome, though misdirected, energy, the greater the promise of success. . . .

He had been captured in a raging snow storm in the wild mountainous section of the state by the constabulary and brought by them and a Denver police officer direct to my court for a plea of guilty.

I knew there was no chance for probation in his case. He had a bad record of hold-ups. For reasons that will appear later, it was the part of wisdom to commit him to the Buena Vista reformatory. But I decided in my own mind that he should go alone.

So I ordered him returned to the local jail until the afternoon of the second day.

Meanwhile the country constabulary, feeling very important over their capture, had waited over to make sure of the expected commitment.

That night I sent for the young bandit. He was brought to my chambers by a friendly local officer and we had a confidential chat that lasted well into the night. As we got acquainted with one another I found he had a real sense of humour. Moreover he seemed to be above the average in intelligence.

He had not expected any quarter and as our conference drew to a close there was no bitterness in his heart toward me as the "committing magistrate." On the contrary, I found him eager to join in the "joke" I had proposed on the county constabulary who were hanging around to see that the judge did not "experiment."

In "conditioning" him mentally and morally for his lonely journey I made a straight appeal to his loyalty.

"Do you know what's been going on around here?" I said to him. "Well, those fellows that captured you have been warming their heels around the radiators and listening to the cussing of some of those officers in the police department. Here's what the officers have been telling them:

"Well, you boys landed him, all right. Good for you! But what the hell that man, Lindsey, is going to do with him God only knows. But if he pats him on the back and lets him go, you bet your bottom dollar we don't bring no more cases to his court. And the district attorney will be with us—he don't have to file 'em there if they are over eighteen.

"Do you know that damn fool judge is just as likely as not to let that kid promise him he'll go all by himself to Buena Vista? Well, if he's that big a fool, of course the kid will run away!"

I could see the youth perking up with interest. The appeal had worked. I confess I could not deal with them all this way but most of the normal-minded offenders could be reached through their loyalty and pride and in the majority of cases with that beginning the work on their behalf could be made permanently effective. For they rarely returned to crime when they had gone alone to jail or reformatory and had thus demonstrated to themselves that they could be trusted under the strongest kind of temptation.

That night I was to see our young bandit passing through the darkness and the storm with his own commitment papers and the money in his pocket to buy his ticket for the long 300-mile ride to the stone walls of Buena Vista, beyond those mountain ranges where he had been captured, to the western edge of Colorado. There was the spirit of sport and the game and adventure in it and I felt sure that the lone bandit and the judge would win.

The next day at the hour set for formal order in the case I looked out of my chambers into the court room and saw our expectant constables seated there surrounded by a number of police officers.

They waited and they waited. Finally they arose and approached my door. Having just received word from the reformatory that the young bandit had arrived safely that morning, it was with a feeling of security as well as concealed amusement that I regarded them as they came solemnly in.

"Where's the kid?" It was the side remark of the local police officer who was acting as guide, philosopher and friend of the visiting constabulary and it was not intended for my ears. But I overheard it.

"Gentlemen," I replied, to the surprise and shock of my guests, "he is now perfectly safe behind the stone walls of Buena Vista prison."

With an unconscious glance of incredulity one of the constables exclaimed much above the whisper that he intended for his associates:

"The hell he is!"

Now the first thought of the local police officer was that I had sent the boy to the reformatory with one of my own court officers, thus depriving the sheriff's office of its rightful prerogative and—what was more to the point—of a fee of some \$200.

"Not at all," I hastened to announce, anticipating the complaint. "I did not send him. My court officer did not take him. He took himself."

"You mean," he fairly exploded, "that he went alone?"

"Oh, yes," I answered. "You know perfectly well that we have sent most of the prisoners alone to the various institutions of commitment."

"But no kid like that," he shot back. "He would never go—I tell you he would never go. How do you know he is there?"

I waved to the telephone and invited him to inquire for himself. But the gesture carried conviction and neither the police officer nor any of his companions accepted the offer, though I could see that none of them understood how a boy would have taken himself alone across the same mountains into which he had fled as a fugitive from justice and in which he had been captured by the country constables only with the greatest difficulty.

As they departed I well know they were trying to figure out "how the hell he did it," and I remembered the exciting explanation given by an officer on a somewhat similar occasion:

"Oh, the judge he just hiptonizes 'em, he does—he hiptonizes 'em."

It was, by the way, an explanation frequently given with more than a grain of seriousness. Not long after my

experience with the country constables I read in the Sunday supplement of a leading newspaper in the East a lurid account of how the judge of a Western city was hypnotizing prisoners and sending them alone to institutions of incarceration to the bewilderment and mystification of the "cops."

The article was illustrated by the weird picture of the judge on the bench (despite the fact that I never sit on the bench in my work with youth) in an old-time formal courtroom. And as he stretched forth his hands with their long bony fingers he stared at the prisoner with bulging eyes while the prisoner with open mouth and helpless gaze seemed to settle under the spell and gaping police officers looked on in bewildered amazement. The prisoner, it was explained beneath the illustration, was being "psychically fixed" to "hit the long trail to prison alone and—miracle of miracles—actually to arrive there." A really serious effort to understand what I was doing with these young offenders and the purpose of it all apparently did not fit into the spectacularism that the misleading article aimed to promote.

And yet I used to wonder if the real truth would not have been fully as interesting as the fiction. For I had come to believe that down in every soul, notwithstanding the effects of bad environment and the defects of heredity, there was what I then chose to call the Image of God and it was up to me to bring it out. And my way of attempting to bring it out was, through personal contact, to eliminate hate and fear, instil trust, arouse the desire to please in proving there was one to be pleased, appeal to pride, loyalty, honour. Surely the fact that this method worked far beyond my first expectations—and even in extreme cases—was of more dramatic significance and genuine "story value" than the shoddy sensational hypothesis of hypnotism! . . .

It was astonishing how much of a strain of temptation could be resisted by those considered the most dangerous among the young prisoners, once this perfectly natural human technique was brought into play.

I remember a boy of nineteen whom I had to send to Buena Vista. He had been involved in a serious felony. One of my chief probation officers, Mr. Harry Ruffner, who heartily sympathized with my "experiments," informed me that this youth, when searched, was found to be in



possession of \$75 in bills but that he had been able to give an entirely satisfactory account of how he got the money.

My plan to send the boy alone to Buena Vista in this case met with the unexpected approval of the police officer on the case. But he warned me not to let the boy take the \$75 with him. The money, he argued, should be sent by cheque to the warden for the benefit of the boy when released or it should be otherwise taken care of for him.

When I laid the police officer's suggestion before the youth he seemed very much grieved and this was explained by the officer as disappointment over the blocking of his secret plan to run away.

The officer contended that the boy had intended to use the money to carry him on through Buena Vista to the Pacific coast.

But was it fair to accept these suspicions as true? Didn't the circumstances afford an excellent opportunity to test the power of those inner forces and restraints in which I had come to believe? I wondered.

On the other hand, could I afford to take the chance? Would it be fair to the boy to subject him to the temptation of possessing this cash? And if he failed wouldn't it play havoc with my work? I knew how just one such failure would be counted against me. It was always so. We were bitterly criticized in those early days when a probationer fell down. It was positive proof that the whole system was wrong. Our critics never stopped to give credit for the greater number that went right. Of course, if the jails were similarly judged—by those that returned—failed—long ago they would have been condemned as hopeless, since more than half of those, treated only to jails, returned to jail again.

I could hear even my friends protesting: "You cannot go too far. If you do, you may lose all you have gained."

But the spirit of adventure was strong within me and I brushed all objections aside. This youth was to have his chance.

One of the great lessons I had learned from people was the value of frankness. I had learned it in dealing with criminals and in solving the problems of domestic relations. I decided to be utterly frank with my young friend.

We sat there together facing each other—alone. I looked him straight in the face and told him everything. I told him

the doubts of the friendly officer and why he was not to be blamed for his doubts, which I proposed not to share.

I told him of his opportunity—and mine; of how he could help me while I was trying to help him and we could thus help thousands like him. I soon found him warming to my appeal. There was, I felt, the ring of sincerity in his enthusiasm.

Of course, he would not make a fool of me. He could, yes, he could if he wanted to. But I knew he was not a sneak, a hypocrite—aye, I knew he was not even a crook. He had done a bad thing but that didn't mean that HE was bad. No, not necessarily.

He would go, of course he would! And he would go with that \$75 cash in bills even if it burned in his pocket. But I was confident that it would not burn, that it would only add thrill and zest to his adventure.

That night, unattended and alone, with a writ that carried greetings, not to the sheriff but to the youth himself, he boarded the night train and through the long night hours in a day coach, where he gained such slumber as he could, he passed through village after village and city after city across the great mountain ranges to the little town of Buena Vista on the western slope of the great hills, arriving in the early morning with the \$75 that could have taken him on to his coveted Pacific coast. That was victory. But it was only the beginning of a far greater triumph that carried him eventually beyond the stone walls back to freedom and usefulness as a respected member of society. . . . When his term had expired he returned with his \$75 to us, buoyed by the confidence that came from being trusted, from winning that game and eager to begin life anew.

Over and over again it happened, to the amazement—and, I am sorry to add—to the chagrin of hostile reactionaries. "Bad" youths and their team-mate, the judge on the bench, ditched that pitiless engine, that cruel juggernaut, The Law, and made their way to success without once falling back on the threat of its destructive vengeance.

Again I remember the bold young bandit—so-called—who had held up seven drugstores. He had a great penchant for drugstores. He would march jauntily into one, generally in a suburb and at an hour when trade was quiet, engage the clerk behind the counter in conversation, luring

him as near the cash register as he could, and then at the right moment blurt out his command:

"Stick 'em up!"

The dexterity with which he went through a cash register was almost unbelievable. He became the terror of the town. It had taken a riot squad to capture him—a fact that he would recall with glowing pride.

During my twenty-eight years of court work I had many friends among the various chiefs of police and I was very fond of the particular chief that headed the department at this time.

He came to assure me that this drugstore bandit was no "baby criminal"—a favourite expression among officers—and asked me please to reserve my "experiments" for some youth that more nearly approached that description.

It was a familiar attitude.

If I fooled with this kid, he said, I was doomed to failure that would handicap my work in those cases that held more promise of success.

I could not promise my friend, the chief, just what I would do. I knew his warning was born of a kindly intent and I thanked him for it.

I can see that youth yet as he sat opposite me at the table in my chambers alone together—the bandit and a human being. He was a handsome youth in his late teens—blond-haired, blue-eyed, as I have so often observed such bandits to be. Under other environment he might have been a Lindbergh. He was mild-mannered, too—"as mild a mannered man as ever scuttled ship or cut a throat."

He had an engaging smile. He was soon at ease with me—as I wanted him to be. He spoke briefly of his mother—in fact, the only regret he expressed regarding his career and capture was that his exposure might hurt her too much. He was afraid she wouldn't understand it! Lacking proper schooling or training, he did not possess the judgment to appraise his conduct for what it really was or to designate it as it really deserved to be designated. It was obvious that he regarded it merely as high adventure!

To my concern as to the danger of taking human life in such conduct he protested that he "never would have plugged anybody."

No, he would have quit before that. Why, he would rather have been plugged himself! And he laughed heartily when

he described it all: "Those guys were just naturally scared. I knew they were scared—they never had no noive!"

And I was at last left guessing as to whether his motive was not much more the "fun" of what to him was high adventure, but to society a terrible crime, than any money he got out of it.

My mind was eased a bit by his apparent attitude towards his failure—he had lost but he was going to be a good sport. He did not whine, or even beg for another chance. That might be for a boy of weaker type but not for him—at least, so he impressed me. For hadn't he more than once returned to his "ego-centric" boast:

"I got noive; de cops won but, anyhow, dey knows I got noive."

Well, I frankly admitted to him that he had "noive."

"But, Son," I said, "the trouble with you is that you use your nerve in a bad way. Of course, you've got nerve. And how wonderful it would be if you could turn it to something straight, something clean, something really worthy of you, my dear boy. You've got a lot of good in you but how a fellow with your nerve could use such darn poor judgment is more than I can understand."

I might describe in greater detail the technique of approach in the case of this youth and others like him. But suffice it to say, my aim was really to get us acquainted with one another and to have him feel that while I was very human I was still firm for the right and had neither sympathy nor justification for the wrong—for the bad things he did. I might like him, but not the bad things; and there was a difference between them.

In mentally conditioning these youths to action my main appeal was to their loyalty to one who was their friend and to their sense of justifiable pride and honour. But there was another factor which I did not neglect to bring into play—their pride in "fooling the cop." It was the game instinct. In doing this I was careful not to intensify their hatred of officers. On the contrary, I tried to overcome this feeling by explaining why it existed and why it shouldn't and how in the end hate helped nobody and hurt most the one who harboured it. And in many cases I succeeded to the point where actual friendship replaced the old enmity between many a police officer and his former bandit enemy.

I gradually led my drugstore bandit around to the point where he could expect nothing but a commitment to the Buena Vista reformatory. Then I told him I intended to send him alone.

He was evidently not aware of this practice of mind and he seemed a bit surprised. I told him we must be square with each other. I asked him to be frank with me—if he felt unequal to the task of taking himself alone, I wanted him to say so.

He did say so—he doubted it very much.

Of course in that event, I explained, I could accommodate him with the company of the usual officer and the attendant humiliations of handcuffs and chains. But I hastened to add that I should not depend upon these things once I was convinced that he could make up his mind that he not only could but would be trusted.

"Son," I said, "I want you to have the will to go alone. I'll be convinced that you have the will when I know you are convinced it's the best thing—the only thing I can do.

"Yes, I'll swear to you that no cop will watch you. If you decide to run away, so far as I'm concerned no one will stop you, no one will try to re-arrest you, though I'm not responsible for what the police may do. I don't want you to keep your word with me because you think if you don't you'll be caught—I have known many boys to run away from police officers and from reformatories and reform schools and many of them are never caught."

He was listening, studying me intently.

"Sometimes," I went on, "when a boy promises me to go alone—knowing as I do the temptations he encounters along the way—I give him a clean sheet of paper folded in to a stamped envelope addressed to me. I'm going to give you such a sheet of paper and, Son, if you get weak and lose your nerve and you decide to run away and throw me down and make a fool of me and, of course, of yourself, just sit down by the side of the road with this little pencil and write and tell me how it feels to lose your nerve and turn sneak.

"Of course, with a boy like you that's got nerve I hardly think this paper and pencil are necessary. You've got nerve, all right. All you need is better judgment and in time you're going to get that. And when you do, with that nerve of yours,

you're going to do wonderful things that are straight and square and that never will hurt your mother.

"You've hurt her—yes. But you're going to make up for it some day and she'll be proud of you. Yes, you can—I know you can.

"But say, kid," I say to him as I lean over and look into his clear blue eyes, "here's one of my troubles. I know you've got nerve but the cops don't think so. They think if I send you alone, you'll run away, you'll throw me down like some weak little simp would do."

Suddenly I see his eyes light up, his cheeks grow redder.

"So that's the kind of a guy the cops think I am," he breaks out. "Don't they know it takes noive for a guy to do the things I done?"

"Huh," as his lips curled, his teeth showed and he fairly snorted his scorn, "don't those cops know that a guy what's got noive to do what I done has got noive enough to go to the penitentiary by hisself?"

"You know I got noive, don't yuh, Judge? Of course, yuh do—yuh done said so. Well, I'm a kid yet. Maybe I didn't use my noive right but I got noive. And, by God, you've treated me like a white man, not like no dog or low-down crook—because I may be a crook, but I ain't no low-down crook. And I tells yuh I'll show those cops you're right and they're wrong—I'll show 'em I got noive.

"Don't yuh worry, Judge—yuh just trust me. I'll go and all hell can't stop me. . . ."

I am delivered into his keeping—my work, my reputation, my future—yes, in more ways than one.

"Say, Judge," he says, "give me one of those sheets of paper and an envelope with a stamp on it and your name right so I can send it back to yuh. Yuh just watch me show 'em."

I did as he requested. From the clerk's office an officer brought the money for his ticket and his meals on the long ride to Buena Vista prison. He looked at the money—some small bills and silver. He counted it carefully and inquired the fare, the train and the way. At last, with that sheet of paper in the return envelope and his own commitment papers, he stood and faced me. There was a warm handclasp and a cheerful good-bye. And then standing in the doorway as he slowly adjusted his cap to his finely shaped head, he left this final instruction:

"Be sure and tell the cops, Judge, that that kid has sure got noive. . . . I'll show 'em Judge, I'll show 'em."

And soon the young bandit "killer" was all alone out into the streets of Denver free to make good his word.

He arrived on schedule time and the first mail back brought to my desk the envelope addressed in my own writing. Here is the way it read:

"Dear Judge, I am here all right. But when I got up here a guy on a perch what's watching this dump says to me:

"'Kid, what you doing down there?'

"I says to him that I come here on a commitment paper from Denver.

"He says, 'Where is your officer?'

"I says, 'I ain't got none. I just got noive.'

"He says, 'Noive fer what? Hell—to break into jail with?'

"'Well,' I says, 'I tells the judge I am going to keep my word with him and when he asked me to come by myself he counts on me—see. Cause he knows I got noive.'

"And this guy says, 'You bet your life, Kid. You sure got noive.'

"So long, Judge. When I get out of this dump I'm sure coming to see you."

With tears in her eyes our young bandit's mother came to thank me—and stayed to join my smiles over her Robert's phrase, "I sure got noive."

When his time had expired he came straight to me. He was in earnest—he really wanted to improve his judgment while hanging onto that "noive." From last accounts he was succeeding. His mother calling upon me one day—laughing but now not through her tears—was sure he was "going straight for keeps."

Robert had said so, the judge was helping, and that was enough for her. . . .

As I look back upon the long record of successes in "sending boys alone," understanding the soundness of the psychology upon which they rested, I am still amazed at the bitterness with which they were resisted, though it was, perhaps, but logical.

There was, of course, the "money reason." In 1925 some of my loyal supporters in Denver issued a pamphlet booklet entitled: "Twenty-five Years of the Juvenile and Family Court of Denver, Colorado, Being an Account of

Its Contributions to the Cause of Humanity, Truth and Justice." It was a review of the social contributions of the Denver Juvenile and Family Relations Court during the twenty-five years of its existence under my direction. A paragraph from this publication is pertinent:

"At the time Judge Lindsey instituted his plan of sending many boys and young men to Golden and Buena Vista (our state reformatory institutions) on their honour, it was costing about \$185 under the old fee system to convey a prisoner to Buena Vista and about \$20 to the state industrial school at Golden. It is true this fee bill was later reduced but Judge Lindsey had sent over a thousand boys and young men to prison, including these institutions, unaccompanied by officers whose fees would have amounted in twenty years to at least \$10,000."

And the survey adds: "He has never lost a prisoner by this method. This was shown at a grand jury investigation of Judge Lindsey when an effort was made by a former sheriff to stop this work because this sheriff was losing thousands of dollars in fees. The investigation also disclosed that the sheriff's office and jails had lost many escapes in 'breakaways.' Lindsey had lost none in trusting them."

The loss of income to a small group of officials from this particular line of my "experimentation" is thus plain. Coupled with the reaction from this definite attack upon the political "exploiters" there were the deep-seated fears which my whole programme aroused. "Where will this fellow Lindsey stop?" they asked themselves—and the public. And a large section of the public, dominated by the traditional fear and hate of "the criminal," responded.

They fought me by fair means and foul.

I remember in their effort to discredit the practice of "sending them alone" they even bribed two young bandits about nineteen years of age to run away. They assured the bandits no effort would be made to recapture them. Without any definite promise of performance the boys accepted the money, \$50 a piece.

Then these enemies of mine hurried to a reactionary corporation newspaper with the sensational story of how, over the protest of the sheriff and chief of police, I had sent two daredevil bandits, whose escapades had been dramatized on the front pages of the press, alone and unattended to



Buena Vista. And, of course, the youths had failed to arrive. They hadn't even taken the precaution to find out whether they had or hadn't, relying upon the money paid the boys as a certain guarantee of failure.

I shall never forget the apprehension and anxiety that possessed me when this newspaper story appeared. I tried frantically to communicate with Buena Vista by telephone but was unable to do so. There had been a great storm in the mountains and the wires were down, temporarily intercepting both telephone and telegraph communication. However, the repairs were soon made and it was not long before I was to hear the good-natured voice of my friend, the warden, booming from the receiver:

"Don't worry, Judge—your kids are here, washed, dressed and in line."

I sent the true story of what happened to these boys to the hostile newspaper but it was not published. It fared a better fate, however, with the opposition daily.

This sort of tactics was, of course, exceptional. The weapon most commonly used to hold me in line both as to "sending them alone" and granting probation was to prevent my court from functioning in cases of youths between eighteen and twenty-one years old charged with criminal offences. "Co-ordinate jurisdiction" for the trial of youths between those ages played into my enemies' hands. Informations or complaints charging offences against such older youths had to be filed by the district attorney's office and that office, in many cases could exercise its judgment as to whether they should be filed in the Juvenile and Family Relations Court or in the West Side Criminal Court.

When I offended the district attorney and the police department by "trying out my experiments" on one of their convicted youths over their protests, retaliation was certain. For a considerable period following such a conflict of opinion no criminal cases were filed before me. They were taken before other judges in the criminal division who seldom, if ever, placed a convicted boy on probation nor showed the slightest interest in his welfare, and who certainly would never be guilty of any such heresy as "sending them alone." . . .

Much has been written by friends and foes in America and abroad about the novel practice of our court of letting

"criminals," young and old, "take themselves," unaccompanied by officers, to penal and reform institutions.

The publicity was inevitable for the new Technique was undeniably dramatic.

But I cannot close this chapter without emphasizing the fact that I resorted to it generally only in a last desperate effort to save what I could out of a situation in which I was largely helpless.

I had to "send them alone," in some desperate cases, remember, to reformatories and penal institutions though I did not believe in reformatories and penal institutions, generally, as they were then operated. Had I avoided sending them altogether, the power of the district attorney to take away from our court all felony cases against those between eighteen and twenty-one in which we only had co-ordinate jurisdiction (not exclusive jurisdiction as in all delinquency cases of youths under eighteen) would have been exercised to the destruction of all our work, for those we could deal with. And in such equipment as we have, in some cases it is as yet the only way we can be firm as well as kind. I believed that probation, wisely administered, was much more effective in protecting society.

I recall in one long, hard winter when employment was scarce and poverty plentiful the police rounded up between forty and fifty "dangerous" young burglars and "stick-ups." There had been an epidemic of highway robberies and similar crimes and, as usual, the perpetrators were mostly boys between the ages of eighteen and twenty-one. We made a careful survey of these arrests and we found that not one of the boys had ever been on probation from our court, while more than half of them had at some previous time been committed by judges of the criminal courts to Buena Vista prison where they had been taken in handcuffs and chains by armed officers. It was the old story of their coming out much worse than they went in, with the usual result of more dangerous marauders and society more certainly the victim.

I did not wonder that one of the best chiefs of police we ever had—a firm and understanding and humane man—had announced both publicly and privately that he would just as soon break a boy's neck as to send him in the ordinary way to the state reformatory of that day. Humane wardens

from time to time have tried to reform the old-time reformatories, but they generally have a tough time doing it. They usually meet with the lack of appreciation shown my friend, Thomas Tynan, who as warden did so much for changes in our Colorado penitentiary, and Warden Lawes, who had done so much at Sing Sing in New York.

Fortunately for us, the old system of criminal justice hit the taxpayers in a tender spot—the pocket book. It was permeated with absurd extravagances, as we were able to point out.

I remember well, before the coming of our court, the case of the two twelve-year-old girls who were solemnly arraigned before a justice of peace on a felony charge of “breaking and entering”—or just plain burglary. In spite of the protests of the poor frightened mother, they were bound over to the criminal division of the district court and there tried by the district attorney and convicted. They would have landed in jail, too, had I not protested to the judge against the outrage and induced him to suspend sentence and send them home to their mother.

Now the total fee bill loaded by officers upon the taxpayers in this case amounted to several hundred dollars. And what was the case about? Well, these two little girls had taken ten cents’ worth of beads from a cheap department store!

There was, we were able to convince investigating grand juries, no such criminal waste of public funds as this in the operations of the Juvenile and Family Relations Court. And I am sorry to admit that this argument probably had greater weight with the taxpayers and some state and city authorities than the constructive work we were doing for Denver’s boys and girls.

The savings effected by the juvenile court through the operations of the probation system were briefly discussed in 1925 in the friendly pamphlet to which I have already referred. The total at the time for the 25-year period of the court’s existence, was estimated at \$2,000,000.

This figure was based on the findings of no less an authority than Governor Peabody, who, in his inaugural address to the Colorado legislature of 1903, made the following statement regarding the change in system effected through the juvenile court:

"As an illustration of the practical results accomplished for the taxpayer, it may be stated that the cost of trial, conviction and maintenance at Golden or Buena Vista of fifteen boys, juvenile criminals, as shown by the records of Arapahoe County (now Denver County) is \$227.90 (for each case). During eighteen months 454 juvenile delinquents were tried in the county court (now juvenile court) and put on probation at an average expense of \$11.89, resulting in a saving to this county and state of \$88,827.68.

"In addition to this, these juvenile delinquents, with scarcely an exception, have been turned into the right path and give every indication of becoming upright, honourable citizens."

These estimates of Governor Peabody were made as a result of a thorough investigation of the court and its work, by an impartial committee appointed by the governor for that purpose at a time when the court was being assailed by some of its most powerful enemies.

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## CHAPTER VIII

### THE PSYCHOLOGY OF WAR

IN its final analysis, what we were trying to do in our work with wayward youth was to bring about a feeling of trust and confidence, a spirit of friendly co-operation, between youth and the state.

We found ourselves too often confronted by an unmistakable psychology of war—officers of the law flaming with hatred against young offenders and ready to "shoot it out" on the streets or elsewhere at the drop of the hat, and the young offenders prepared for self-defence and bloody retaliation.

In such an atmosphere crime thrives inevitably. In the midst of such violence it most certainly is NOT "exterminated."

Obviously, one of our greatest needs was a new type of officer—men of the type that was already making itself felt in some of the better industrial and reform schools over the country which were really accomplishing the rehabilitation of youth. For more than twenty years I had

advocated a school for policemen or a department in the universities devoted to education in that important work. While we were able in our work in Denver to change the viewpoint of some of the old-time officers so that they became enthusiastic exponents of the technique of "co-operation," generally speaking, they were worse than useless in dealing with youth. They roused needless antagonisms wherever they went.

Of course, this new type of officer should have the assistance of the school and the home. The policeman should no longer be held up by teacher and parent as a bugaboo to compel obedience. He should be pictured not as an avenger to be feared but as the friend and protector of us all.

The court records are permeated with needless tragedies that grow out of the fear and hatred of the "cop" instilled by ignorance in the minds of children.

There was, for instance, the case of the "filling station bandit." In attempting to escape from a daring holdup this boy, about eighteen years of age, was pursued by a motorcycle officer and there was an exchange of gun fire in which the boy had escaped injury but the officer had been wounded. The boy was captured.

There was a question for a time as to whether the officer was not mortally hurt.

I knew this man. He was a fine type of officer—the last in the world that deserved such a fate. In his dealings with "daredevil kids" he had been kind, yet unalterably firm. Those who knew him held him in respect and he was seldom, if ever, called upon to resort to those measures of violence that have resulted so often in tragedy.

I was much concerned over the case and I had the boy brought to my chambers for a private conference. As I studied him, delving in my amateur's way into conscience, emotions, motives, I might have repeated a common remark of civilians who have had such experiences:

"Why, he doesn't seem such a bad kid, after all! How on earth did he ever come to do such a thing?"

That query seldom gets the answer it really deserves. I decided to go back into his life to see if I couldn't find it. Somewhere in his past there must be a key to the hatred that had flamed in his face at his outburst against the police. What had they done to him that they should not have done

in the course of their official duties? What had they done that they could not have avoided doing if they lived up to their responsibilities as had this brave, fine officer? Just when did the attitude of mind responsible for this near killing of a human being begin?

As I went on with my probe it soon became apparent that the cause of the youth's hatred was more deeply seated than anything connected with the filling station holdup and the running gun fight that followed, in which the policeman was, by accepted standards, so completely in the right.

In the midst of the search in which the prisoner was trying to aid me I unexpectedly and perhaps accidentally touched the hidden spring of action, for he suddenly cried out:

"I'll tell you when it was. It was when I was a little kid—that's when it was——"

And his recital grew more and more hysterical as he continued:

"Every time I done something I shouldn't do, Mother keeps screaming at me, 'The cop will get you for that, the cop will get you for that!' Why, if I went out into the street to play it was always the same: 'The cop will get you for that!'

"And so I got scared of him—you bet I got scared of him. It didn't stop me; no, it didn't stop me. I could do it just as long as I was slick enough to see that the cop didn't get me.

"But, gosh, how I hated that cop. He was against me, he was—always against me. I couldn't do nothin' unless I was sure he wouldn't catch me. I always hated him.

"When I thought of pulling that filling station job, I says to myself: 'That's easy. I'll swipe an auto and change the tag and I'll go out and stick the place up—Gosh, I just had to have that money—and I'll make a getaway before the cop can get me.

"'And if he comes,' I says to myself, 'I got a gun just the same as him.'

"I never thought he'd come but when I heard that damn screeching thing racin' down the road to get me and he begins shootin', I says to myself, 'I can shoot, too, damn him—I can shoot, too.' . . . Mebbe I shouldn't have stole nothin' but he's got no right to kill me—a kid—you bet he ain't.

"So I just shoots back as he shoots. No, reely, Judge, I never intended to reely hit him. I thought I could jest scare him. But when I sees him buntin' into the side of the road, I says to myself, 'My God, I must have hit him!'"

"Say, Judge, I hope he ain't dead——"

And he broke into sobs, flopped into his chair and buried his face in his hands across my table.

"I hope he ain't dead," he kept on sobbing. "I hope he ain't dead. It wasn't his fault, it wasn't his fault. Tell me, Judge, you don't think he is going to die, do you?"

Happily, the officer lived, thus averting the age-old tragedy of a "life for a life." For nothing could have quelled the howl of the mob for vengeance, "Hang him, hang him, hang him," if the officer had died. . . .

The more I studied the story of the filling station bandit, the more its significance impressed me. The young bandit, plainly, was the victim of the stupidities of a well meaning but uneducated mother. The threat of the hypothetical cop was to her a shortcut to righteous conduct on the part of her son and she did not know that these shortcuts often prove to be dangerous paths.

Oh, yes, the threat of the cop brought the boy into the house from his play on the street—the play that was so dear to his heart! But his coming was sullen, grudging, reluctant—in the absence of any good reason for it—and to him the "goat" responsible for it all was the accursed cop whom he didn't even know. He became the victim of cumulating hates from his thwarted desires. . . . After all, as a primate, he was running true to type. The caged animal is ever ready to spring upon his captor, unless the captor is wise enough to conceal from the animal the fact that he is to blame for the incarceration.

The remedy for this sort of violence and all the suffering resulting from it lay, of course, in an utterly different approach by the mother to the problem of her son. And this mother might have been properly equipped to perform her important task had the state, instead of stupidly seeking a lone and sole remedy in the punishment or destruction of the youth, established the school for the impelling or compelling education of parents that I had long before urged upon a derisive legislature.

Instead of warning, "The cop will get you," the enlight-

ened mother would have said to that potential bandit back in his tender years:

"Johnnie, it's dangerous for you to play out there in the street. You know there's no policeman there to see that you're not run down by the traffic. The policeman is your friend. He takes little boys by the hand and leads them across the street in safety. When he's around they don't need to be afraid of being hurt—of losing their legs or arms so that they cannot play at all."

Reasoned with in this way, the child in later years is hardly likely to burst into the fury and flame that nearly cost the life of that fine motorcycle officer.

The filling station bandit, it will be remembered, spoke of the pursuing officer's having a gun. That fact was buried deep in his consciousness. The officer had a gun. The youth had a gun, too. Both sides were prepared for mortal combat, offensive or defensive. The psychology of war! Would the result have been different if the officer had been unarmed and the bandit knew he was unarmed? I raise the point without reaching any hard and fast conclusions.

During the world war, while I was in London, I noted with interest how little the police there depended upon the use of firearms. Generally, I was told, they were not armed at all, arrests being made except in rare cases by unarmed officers.

I remember I came into contact there with one of our Denver boys who back home had had the reputation of an ugly temper in his occasional drinking sprees. This fact, together with his habit of carrying concealed weapons, had made him a serious menace to the police.

In talking with him I carefully commented upon the importance of his reforming his ways in London, where a killing resulting from an exhibition of temper and the use of firearms would much more certainly result in a hanging than in his own country.

"Oh, don't worry about my getting into any trouble like that over here, Judge," he shot back. "I don't carry no gun at all here even if I am out for a good time. Why, even the cops here don't carry no gun. Why the hell should I have one?"

Here, it seemed to me, was something for American crime commissions to think about. If that youth of nineteen, that



"filling station bandit" whose tragic case I have just described, had lived in the traditional atmosphere of London and had known that the approaching officer not only had no gun in hand but no gun on his person to take in hand, I am positive there would have been an arrest without violence and without any danger of a tragedy that nearly brought death to a brave officer, and widowhood to his wife, and that subjected the youth himself to the terror of a narrow escape from execution. Nor should we have had the scarcely lesser tragedy of life imprisonment for the youth and a broken-hearted mother left behind.

It may well be that in our warring system of "criminal justice" itself lies the cause of much of the prevailing crime. . . .

I remember, too, another nineteen-year-old youth whom I went to see in a Los Angeles jail. With two other boys he had stolen an automobile. A fine young officer, not suspecting him of the theft of the automobile but curious as to another offence with which he was, as I recall it, not connected, approached the automobile in which the youth was sitting along the kerb in a suburb of the California city.

Suddenly pulling his gun, the officer assumed a menacing and hostile attitude toward the youth, who countered with tiger-like swiftness and gained the drop on his antagonist. The officer was dropped in his tracks. The youth was off in his car beyond immediate pursuit. In the absence of any aid the stricken man died almost instantly.

It was a terrible crime. And it called for severe measures. I am not here objecting so much to the extremity of the penalties exacted by the state as I am to the lack of any effort on the part of the state to eliminate the causes along the road in the life of childhood and youth that make for these crimes. For if we paid a fraction as much attention to intelligent understanding of causes and the application of remedies by parents, teachers, officers and others in the lives of the young, we would do more to prevent such tragedies than the state has ever done or ever can do by way of the hangman's noose or the chair that burns and kills.

It was through friends of the boy who pitied the pathetic, dazed and agonized mother as much as the bereaved young wife of the officer that I became interested in the case.

Unlike the judge who was to preside at the trial, I was so fitted that I could find myself before the bench of the boy

up there behind the bars in the Los Angeles jail instead of observing and enforcing the proprieties of a court.

Afforded every courtesy, as I have always been by the warden of that jail, I soon had the confidence of this youth. Although the state, down to this time, had depended largely upon circumstantial evidence in the face of the boy's persistent denials and plea of not guilty, after my first contact he abandoned this stereotyped defence mechanism and he told me the last detail of the crime.

I found the same penitence, the same regret, the same inward terror and bewilderment at what he had done that I had observed before in cases of this kind—the same straining hope that after all he might yet awaken to find it was only a nightmare.

"I did not want to kill that cop, Judge," he cried. "Really, I didn't. But what's a guy going to do? He comes toward me with a gun in his hand, threatening and demanding—and I have just always been scared of cops. You see, Judge, my dad was killed by a cop and it seems like, before I knows it, it's either kill or get killed.

"And then I gets the drop on him first and I've done pulled the trigger almost before I knows it and that cop falls—Gosh, I was scared. Of course, there was nothing for me to do but beat it.

"But I know you'll believe me, Judge. I didn't want to kill that cop. . . . Yes, I'd hang, I'd be glad to hang if that would only bring him back to life and he could go back to his wife and kid. God, I'd be glad to hang for that. But it ain't no use, Judge, it ain't no use. If I hang, it don't bring him back . . . it don't bring him back."

And then there was a terrific roar above the building, the singing of the propellers of aeroplanes in the sky. It caught his attention and he peered out into the blue. He was silent for a moment. Then, as though beating not against the bars but against the suppressed desires, hopes, ambitions of his soul, the real youth sobbed:

"God, how I wanted to be one of those guys! And now look at me—I've come to this because I got scared at that cop!"

And again he lived the terrible drama of the killing as he went on explaining: What did he have that gun for? Why did he have it? If he "hadn't had the damn" thing he wouldn't

have done it, he wouldn't have done it. It would have been better if the cop had killed him. . . .

"Well, son," I said in an effort to calm him, "it's too bad that officer came toward you with a gun in his hand. He probably thought you had a gun and YOU KNEW HE HAD A GUN——"

"That's it, Judge," he burst out sobbing, "that's it. It was the gun that caused it—it was the gun that caused it."

Again I was learning the same old lesson from the lips of youth—the folly of the "war on criminals" on which crime commissions pin their sole hope and the futility and danger of the psychology and instrumentalities that go with it.<sup>1</sup> And from the lips of Jack Black, famous ex-convict and now friend of mine and good citizen: "What would I do, Judge," he said to me one day, "to lessen crime—oh, a lot of things—but one thing first—abolish all the guns and pass laws and enforce 'em against carrying 'em or selling 'em, as you would abolish selling dope or any other dangerous thing *like that*."

<sup>1</sup> Incidentally, it may be interesting to note that this boy, Frank Miller, became very much interested during my visits with him in prison in the story of how I had sent youths to prison alone in Colorado. Due to an eloquent and able defence, he had been spared the death penalty and had been sentenced to San Quentin for life. I found him keen to know if HE couldn't be trusted to go alone to San Quentin. I am sure I convinced him that that would be a fine way to prove that he meant what he said—that he was no "murderer," that he never intended to kill the officer, but that he was "just scared, just scared that the cop was going to plug him." I had him all keyed up to go alone—he'd "show 'em" he "had the guts to go, and all hell couldn't make me run away—when I promise you, Judge—to go, alone for life to San Quentin."

I took this matter up with the warm-hearted but firm and able deputy prosecutor, Joe Ryan, and he said he believed I could put the boy in such a frame of mind that he would be as safely in the custody of the state in transporting himself to San Quentin as if accompanied in chains with officers.

"I believe he would go," Ryan said, "and it would be a helpful thing in his life. But the officers charged with responsibility for the prisoners wouldn't care to take the risk. You are a bit beyond them yet. . . ."

And so the youth had to be disappointed. It was too bad, for I am sure he would have entered the prison gates with high hopes in his heart and a greater willingness to accept what the fates had decreed for him than he did when he entered in his handcuffs and chains, unable to help to prove that he really was NOT all that the state said he was.

## CHAPTER IX

## THEY CAME ALONE

ALL over the United States I meet them—the grown-up boys and girls of the Denver juvenile court. They are still my boys and girls. There is a sort of freemasonry between us—buried deep in the years are secrets that are ours and ours alone. We understand many things that are perhaps beyond the untried and the untempted. . . .

Especially gratifying to me has been their pride in the court and their affection for those who served them in it.

I hope I am not misunderstood. I am not writing boastfully. These joyous reunions that have been my good fortune in many cities are more than a mere tribute to a personality. They are the incontrovertible proof of the soundness of a social technique, a human method of approach to the problems of youth, that if widely employed would revolutionize the world. There is nothing like its power in all the guns and clubs and other instrumentalities of brute force of all the cossacks of Christendom!

These boys and girls of the court, to the measure of their abilities, are making good in all the walks of life. They are meeting the conventional requirements of society.

I drive across the desert into Salt Lake City and a confident and competent young bell boy who once held "conferences" with me about a little matter greets me eagerly, hopes I haven't forgotten him, and introduces me enthusiastically in the lobby of the city's largest hotel to a circle of fellow bell boys. He goes to the telephone, tips off a prosperous stock broker, owner of pool rooms and hotels, who is something of a political power in the community, and I am taken for a limousine ride and shown the palaces of the successful in Salt Lake. The stock broker—or stock gambler? Yes, he, too, was one of my boys.

I go to New York and a rich broker, whom I once sent alone to Buena Vista, favours me with a banquet and we jest over his doubtful improvement.

In Los Angeles I am the guest of honour at a dinner given by a member of the most famous jazz orchestra in the world and we recall old days in the court.

In Omaha, staid citizens—"burglars" and "bandits" of former Denver days—hold a regular reception for me.

Again, in Los Angeles ten of the girls who "graduated" from our work invite me to an early breakfast and I am jovially dubbed the "judicial sheik."

In Caspar, Wyoming, one of the town's leading business men introduces me at a public meeting and credits the court for such success as he has achieved.

In Hollywood I recognise successful men and women in many of its ramifications with whom as youths I had some contact. There was the crack camera man who whispers to me that he's "doing a different kind of shooting now."

And a uniformed and trusted chauffeur in the same town employed by an eminent personage of moviedom, drives me in state to the great studio and slyly winks as I discreetly telegraph a mental hello.

Motion picture actors, too.

And in other cities, a real estate man, an architect, a merchant, a rich speculator in oil—all grateful that they had escaped the clutches of traditional "justice" and, instead, had come under the sanely constructive influences of the court. . . .

The tough youngster of the "River Front gang"—there were seven of them and six of the seven turned out well.

The cold records show that from eighty to ninety per cent of the boys who passed before me never returned for a repeated offence.

I have already explained much of the technique which I am convinced was responsible for this amazing success. A factor which I have so far neglected deserves special consideration here. Because of the informality of the court's proceedings *they came alone*. In previous chapters we have observed how *they went alone*, hundreds of them, to reformatories and so-called reform schools when I could not avoid sending them there, since my work called for firmness as well as kindness. That was important, but even more important, as an explanation of the vital grip of the court on community life was the fact that *they came alone*.

They did not wait for the law to bring them. When boys and girls were in trouble they sought the court as a place of refuge, driven by the necessity for human understanding and the knowledge that they would be helped.

Among them were burglars, bandits, little boys and girls involved in neighbourhood feuds and quarrels, parents enmeshed in the discords of domestic relations.

As examples of many such episodes:

After school and court a ten-year-old boy comes alone to my chambers.

"Is the judge in?" as, at first, he timidly approaches my table.

"Yes—the judge is in—"

"Are you it?"—he inquires cautiously.

"Yes, I'm it—the judge. And what is your name?"

"My name's John."

"Well, John," I said kindly, beckoning him closer to my desk, "how did you get down here?"

"Most every kid I see'd knows the way down here. You see I know Joe Larsen—he swiped sumptin wunce, 'en he got down here 'en yer give Joe a chance if he'd never do it agin—'en—'en," he hesitated, "I swiped sumptin," tears threatening now, "'en a feller found it out 'en he said, 'kid, the cop'll git yer for dhat'; 'en then—I remembered Joe—so I thoughter better git here 'fore dhe cop did." And he came closer as I smiled kindly.

"Well," I said, "John, tell me, what did you come for—all by yourself!"

"I comes down here to tell yer I'd cut it out and never do it agin if you'd give me a chance, like you did Joe."

"That's very fine, John, but tell me, Son, why didn't you tell your mother?"

"I ain't got none. Yer see my mother's dead, 'en I lives wit my aunt, I do."

"Why not tell your aunt?" And here the tears did come.

"Oh, gee whiz, last time I done sumptin bad and she found it out, she just licked dher tar outern me, she did, 'en I tell yer I'm skeert ter tell her nothin'."

And it was a joyous adventure to teach a little boy to do right because it was right, and not to be afraid.

There were the two little girls, also aged ten. All alone, they burst suddenly into my chambers one day. It was the case of "the little girl and her cruel stepmother."

The guide, philosopher and friend of the alleged little victim was the more aggressive of the two. After she had listened to the troubles of her chum, she had decided, she

explained, that they must come to see the judge. Hadn't she heard of him, and wasn't he the friend of the kids? Of course he was, and here was the hope for justice.

"You see, Judge," she explained, "Betty is my chum, and she's a good girl, Judge, but she's got a crool stepmother, and she beats her, she does, so I just told her to come down here with me, for I knew you would be her friend and stop it."

And then we counselled together about the table with the result that the "crool stepmother" turned out to be not so bad after all. Without offending, but regarding the case with good-natured humour, I was soon able to restore confidence between all of them. It appeared that our aggressive little ten-year-old, a promising little Portia, had been a bit too hasty in judging the case. Lacking all of the facts, she was not as yet competent to be a just judge. When it was "all straightened out," the "crool stepmother"—as I have found to be the fact with most stepmothers—had only been a bit firm, and in time even our little Portia was more than satisfied that justice was done. Instead of being resentful, the stepmother was only too glad to join in correcting the misunderstandings that had caused her stepchild to flee in tears to her beloved chum—as she would probably have done from any chiding, however just.

How can I ever forget such episodes as that of the troubles between the little gang and the barbers' college?

Several of the younger probationers belonged to the North Side gang.

They reported to me every other Saturday with cards from their teachers and parents, describing their progress in school and at home, in order that I could have an opportunity to praise them for the good they did. They were among my intimate friends.

One day after school and court there was a sound of scraping feet outside my chambers' door. It opened to this eager little gang. They, too, had come to "git jestic."

The cause of that quest for "jestic" was the mild feud between the gang and the so-called "barber's college." The "college" had at one time taken juvenile subjects for barber students to practise on for skill in tonsorial artistry. But it seems that the members of the gang, as subjects, were getting to be more of a nuisance than a help to tonsorial education. So when the little fellow who aspired to leadership in the

gang found that his lengthening locks were signs of femininity that threatened his ambitions, he had called at the "college" for a free haircut.

And in spite of the protest of the barber that they "had had kids enough to practise on," he climbed into the barber's chair and demanded "his rights." The barber impatiently ran his clippers over just one side of that tousled head. When he had reached the line of exactly one-half of a haircut he ceased operations. For excuse to be rid of an unwanted subject, at this embarrassing moment he had announced:

"Kid, you got things in your head. Get out o' here," as he dropped Young America to the uninviting floor.

"I ain't got things in my haid, you mean old thing. You'd better finish that haircut or I'll call dhe cop."

But his protests were in vain. Out on the sidewalk he found no comfort from the officer of the law. That "authority" was a friend of the tonsorial profession. He sympathized with the perpetrator of the outrage with the unfeeling comment:

"Them kids are making us trouble 'nuf 'round here. Time some of 'em was gettin' set on."

And the little victim's appeal to the gang for help at first brought only shouts of laughter at the ridiculous plight of "The Kid with Half a Haircut."

Then a little probationer from our court came to the rescue. He rebuked the gang for its jeers. Wasn't one of their loyal members the victim of a "turrible injustice"?

"Sure," he orated, "dhis gang must stand togedder. The kid has been given a dirty deal, and this fly-guy of a barber-butcher has got to pay. You kids come on wit me down to dhe court where you can git jestic."

And here they were.

There were no papers, records, no lawyers, just kids—eager little bundles of humanity. This little leader of the gang assumed all responsibilities of advocacy as he faced me there in my chambers.

"You see, it's like dhis—Jedge—Dhis kid has got a dirty deal and dhe cop only gives him dhe laff. So I says to the gang, 'You come wit me down to dhe jedge and you'll git jestic'."

Then, turning to the little victim as his first witness for the people:



"Jes' tell the jedge what dhat fly-guy did to yuh, kid." There was little need for more than that ridiculous little head, but he told me.

"Ye can see for yourself, Jedge," the victim of injustice rose to the occasion, "what dhat fly-guy of a barber-butcher done to my haid," as, suiting gesture to word, he directed my attention to its tonsorial imperfections. It was scandalous enough to shame any decent barber. And resenting insult, added to injury, "'En he don sez I got things in my haid. And I tells him 'tain't so—Miss Jones got 'em all out with kerosene over to the school long time ago. You can ast her yourself. But just take a look, Jedge, just take a look"—as he bowed for my inspection. "Don't you see I ain't got nothin' in my haid?"

I don't care to "snitch" on what I thought I saw. Perhaps it threw the barber into a panic. But I was determined to "do jesticce though the heavens tumbled."

Eagerly the gang listened. I called in one of my probation officers. Controlling our smiles, I ordered the officer to proceed forthwith, at once and immediately, with the victim of the barber-butcher to the scene of the crime and see that the villain finished that haircut.

Later in the afternoon the triumphant gang was back again, as the little victim offered thanks.

"Thankee, Jedge," he beamed through smiles and tears, "I got jesticce, thankee, I got jesticce."

And the probation officer added, "He got more than that, Jedge. The professor at the 'college' bids me tell you he also got a shampoo and a free bath and the only reason he didn't get another kind of shave was that he wasn't old enough."

As I reach back through the years many specific instances rise in memory, but none of them I think more significantly than the so-called "sex-cases." They involve a psychology of hate and fear that makes the ordinary court detestable to those involved.

Once in an eastern city where it was contended that only a woman should hear girls' cases I visited a court presided over by a woman judge. This judge was trying a fifteen-year-old girl who was weeping disconsolately. Though the court was supposed to be private, there were twenty persons in the room, including the police officer, all of them gaping

curiously at the girl. On the woman judge's desk were about three inches of records beneath which, I suspected, were concealed some homilies on standards and an account of her sisters, her cousins and her aunts and her parentage several generations back.

When recess came I asked the judge how many girls came to court by themselves. The question seemed to confuse her.

"By themselves?" she asked. "What do you mean—'by themselves'? The girls are brought here on written complaint of the officers. How else would they be brought?"

"Suppose," I explained, "that a high school girl or a working girl or even a society girl of adolescent age had been exposed to pregnancy or disease or had been otherwise disturbed by her sex conduct or had a friend in similar trouble, would that girl come here by herself to see you or any of your officers?"

"Do you mean," she responded in surprise, "that they would do that—that they would come here alone?"

"Yes," I answered, "that is what I mean. Would they come here voluntarily and alone, especially without the knowledge of their parents and teachers?"

The dear old lady of the bench gave me a blank look.

"Oh," she said, "I don't understand you."

Yet that is exactly what they did in the Denver Juvenile and Family Relations Court. They came alone and were helped and got others to come alone, thus starting the endless chain. We estimated at one time that as the result of assistance given to one girl "gone wrong" 300 others came to us in the space of less than a year. Of course no official records or conventional case sheets were made of these cases, or they would never "come alone." The fine service in each case would have been impossible, for they would, in most such cases, have struggled through their tragedies in a different way.

One of the good results of this work was to carry many girls through pregnancy, preventing the butchery of abortions and finding homes for their children without the handicaps of social exposure and disgrace.

Surely here was a constructive work that was entitled to the support of the "moral forces" of the community. Yet it is a curious fact that it was continuously under fire from this direction on the ground that it was an "encouragement

to immorality"—a line of reasoning identical to that of the fanatical prohibitionist who insists on poisoning intoxicating beverages in order to discourage the violation of the eighteenth amendment.

Among the enemies of this work were certain members of the school board and certain of the political leaders of the Mothers' Congress and Parent-Teacher Association. Although many of the leaders and generally the membership of this organization were our friends, yet the majority of the official board, with the backing of the school political leadership of the association, refused to co-operate in any of our efforts that did not involve the sharing of the confidence of the child with the teacher or principal of the school and always with the parents. And yet, ironically enough, although a majority of the official and political leadership of both these bodies actively fought me, I had, without the knowledge of any of their members, saved from disease, exposure and disgrace the daughter of a one-time member of the board, the son of another member, and the daughters of a number of the prominent members of the association, one of them at one time at the head of one of the important high school divisions! And I may say in this connection that I got the truth to the parents in eighty per cent of the cases in which they ought to know it, whereas without our system none of the parents knew anything about what was going on. Under their system they generally got nothing but silence and ignorance of the truth about their children, with many resultant tragedies.

Because they came alone and of their own volition to us, because they knew our purpose was to help them through affirmative methods and not to judge and punish them, they told us the truth and a picture of the erotic life of the young in Denver unrolled before us that should certainly have convinced even the most obdurate and thick-headed defender of the *status quo* that something new and strange—whether good or bad—was happening in the world.

I have mentioned the irregular sex conduct of a daughter of a one-time member of the school board and a son of a one-time Parent Teacher Association leader. Many other instances of the violation of the conventional code of morals come to mind. I am not mentioning them because I harbour any feeling whatever against the people involved or their

social or political connections. Most of these people are my friends and often helped us. I mention them because I think it is important to know that such irregular conduct is not confined to any one class, much less the so-called illiterate or poor classes. In fact, I found that neither conventional education nor religion, in places however high and respectable was any guarantee against such irregularities.

While an eminent divine was denouncing me for advocating "The Companionate Marriage" in lawful wedlock, mind you, his own daughter was confiding to me her love experience, which was one of the most perfect examples of "The Companionate Marriage" *out* of wedlock that I have ever known anything about. I have only advocated it in lawful wedlock. She laughed heartily at her father's ignorance. For his conventional religion she had not the slightest respect.

There were the daughters of some of our most respected families who voluntarily came to tell the story of shocking sex indecencies with young junior high school girls, and to fix the responsibility upon a well-known member of the Denver bar. This man was a prominent member of Denver's fashionable men's clubs. He was especially powerful with the eminently respectable Grievance Committee of the state bar upon which a number of tools of certain political or crooked corporation enemies of mine for whom they were the paid attorneys had taken the lead in the technical political disbarment proceedings against me. And while we were helping this girl, she confided to us the names of four or five of her schoolmates who were being corrupted by this smug hypocrite. Some of them, voluntarily and without the knowledge of their parents, had come to see my wife and Miss Vincent, our girl officer. Both of these women in the confidences of our work had with me listened to the amazing stories of debauchery of these young girls carried on by this member of the Denver bar and some of its exclusive clubs.

Knowing his prominence in these quarters and his power with the Grievance Committee of the state bar, I sent for the then chairman of that committee, after I had first procured the consent of one of the girl victims. It was given on condition that neither she nor any of her girl friends would be subjected to public exposure. She freely and voluntarily related her story to the then chairman of the Grievance Committee of the state bar. He heard her story in my chambers part

of the time while I was present, and part of the time when he was alone with the girl. He hadn't the slightest doubt of the girl's story.

He seemed to agree that under the circumstances nothing more could be done about it than what I did do. This was to put an end to the debauchery by getting the promise of the girls not only to keep away themselves, but to warn the others involved. I succeeded in getting word to that prominent lawyer and clubman that I would find a way to "break his damn neck" if he didn't change his dirty habits.

This the then chairman of that Grievance Committee who was thus acquainted with the shocking conduct of this lawyer, was, without my knowledge, afterwards secretly excused from serving on that committee just before it was to hear the disbarment case that had been filed against me by the attorney for the representative of the Ku Klux Klan in [the case brought by the klan to remove me from the bench.<sup>1</sup>

Since that political disbarment case of my enemies involved my helping to save millions of dollars for two disinherited Denver children in a will contest pending in New York City, and in no way connected with our court, I could not help but feel the irony of how that good work of mine, open, honest and above board, could thus be made to contribute to the possible protection of a corrupter of little girls. For he had reasons to hope that that Grievance Committee, as then constituted, would find a way, however unjust, to keep a judge such as I was out of the juvenile court. Under no other system of work, before or since, than that we conducted in the court was there much if any chance to protect the innocent childhood of our city against the debauchery of cunning, clever crooks like this "eminently respectable" member of the bar and influential hypocrite.

I had saved many children from such debaucheries.

Then there was the daughter of one of the former high officials of the school board who held his position through the political influence of one of the great financial powers in Denver. It was a power that also despised me. This former high officer of the school board had never hesitated to hamper our work when he could. When his daughter was involved in sex relations with quite a number of high school boys, I had saved the family from public scandal. He at least came

<sup>1</sup> This case has been discussed in *The Dangerous Life*. (See pages 275-279.)

to me "in sack cloth and ashes" to tell me how wrong he had been, and how grateful he was for what I had done to help his erring child. But there was the son of another such former officer of the school board who had been intimate with only five girls, but because of the confidences involved, especially with some of the girls, it was not within my power to bring the circumstances to his father's attention. And to this day the father of that youth still maligns me without the slightest suspicion of the service I have rendered his family.

One of the most popular girls in a certain high school who had voluntarily come to us for assistance had confided that she had as many as ten lovers during two years of her school days. I remember when she told me I had convinced her of the evils of promiscuity, she had nevertheless decided to confine her attentions to one lover who happened to be the son of one of my bitterest enemies. Neither the girl's mother nor the boy's father had any idea of the secret lives of their children.

How often I attended a Chamber of Commerce dinner or a meeting of one of the conventional luncheon clubs to indulge at times in a bit of grim humour as I listened to the eloquent platitudes of some churchly orator and watched their enthusiastic applause by men who had been involved in cases with girls or women who had come alone voluntarily to us for help! To save scandal and disgrace I had presided unofficially to straighten out their troubles. And it was generally to the satisfaction of all concerned and I believe in every case with a real gain for morality and decency.

In all such work my wife, Henrietta Brevoort Lindsey, was my most active and helpful assistant. Without her wise counsel and the protection of her constant presence as my right hand advisor most of such types of constructive work would have been difficult, if not impossible. Next to her active work in such delicate cases was that of Miss Ruth Vincent.

Miss Vincent had received her training in our court under Miss Josephine Roche, now at the head of a great coal company, where she is doing a most unusual sociological work. Miss Ida Tarbell has recently included her name among those of America's fifty most famous women.

In the early years of our court work Miss Roche was also my valuable assistant as referee and probation officer and more

recently, before we were ousted by the Ku Klux Klan, as clerk of the court.

In most of the types of cases here referred to these women were my only confidantes and assistants. They often shared with me the irony of these situations. It was Miss Vincent who once attended with us a beautiful concert-dance given under school auspices for the display of talents of some of our most charming girls. As youth whirled gayly to the enticing rhythm of the orchestra, she reminded my wife and me that we were the only persons in the world who knew positively that more than half of those taking part had run the whole gamut of erotic love.

This, please understand, is not said either for or against them. I am here passing no judgments. Some of the finest women, wives and mothers I ever knew I also knew in their youth to have had such experiences. It is only just a very small part of the real life that comes to one who adventures into "The Dangerous Life," and in finding there a chance to help humanity, also is permitted more than it is generally given to others, to know the truth about humanity's strength and weakness, its sorrows and its joys.

When some conventional, reactionary judge, preacher, school officer or others denied or sneered at our efforts to give the benefit of our unique experiences to the world, we found that generally it was due to their own ignorance and inefficiency, or to those well known sadistic savageries of envy, jealousy or hatred in its rage and disappointments over their lack of the courage to do what we had done or their lack of understanding of human beings to find out for themselves the truth about life as it is.

This strange irony of "The Dangerous Life" was also encountered in many of our political battles.

During the bitter Ku Klux Klan campaign of 1924, when that organization was all powerful, our court had allowed a mother of six children ninety dollars per month under the Maternity and Aid for Children law.

That law, at much personal expense and hard fighting, we had put on the statute books for their benefit.<sup>1</sup>

<sup>1</sup> From these laws at this time the state was paying out and collecting for the support of children of such mothers several hundred thousands of dollars each year. This was more than was paid to "charity" from all the "foundations" established by all the millionaires of our city. But it was not "charity". It was "justice" for childhood.

A few days afterwards in a stormy meeting, in which I was as bitterly assailing the klan as it had been assailing me, I saw this same woman join others like her (all wearing flaming red crosses) in hurling epithets and obscenities in my face—because I had dared to denounce the mass hatreds and bigotries of the klan.

Some time after this episode our girl officer, Miss Vincent, reported to me:

“A poor mother of eight or nine children, who had threatened suicide if she had another, was proclaiming to a neighbour her joy over her deliverance from sex slavery, due to the help she had voluntarily sought and received at our Birth Control Clinic.

“‘You must go up there and get the help I did,’ she had exclaimed to her neighbours, ‘and then you must come with me to the meeting in the hall back of our church to-night. We are organizing to get rid of this dangerous Judge Lindsey who is trying to break up our homes with a new kind of marriage.’”

And there were the “Christian love” letters exchanged between the reactionary Protestant clergyman, also the Grand Cyclops of the Ku Klux Klan, and a famous Catholic priest in Denver in their joint effort to get rid of me as judge of the juvenile court. This priest had publicly urged my recall from the court if I could not be got rid of in any other way.<sup>1</sup>

But to return to this strange union of bigotry between reactionary “klergy” and the klan. This “Christian” reactionary Protestant cleric and Grand Cyclops of the klan, in and out of plan meetings, had been slandering priests and nuns with unmentionable stories about the House of the Good Shepherd. Publicly I had bitterly denied his accusations. For this and my general opposition to the klan, this “klerical” Grand Cyclops also was against me.<sup>2</sup>

We now beheld the delicious spectacle of these two apostles of Christ exchanging “love” letters with each other, growing

<sup>1</sup> It was only a short time after these loud public demands of this famous reactionary Catholic cleric when the supreme court of our state, made up mostly of politicians, whose chief judge at this time was looking for support for re-election from clerical sources, accommodated them “another way”—by removing me from my court upon trumped up charges, shown by subsequent public confessions of the conspirators, to have been brought and paid for by the Ku Klux Klan. (See also pp. 279-280.)

<sup>2</sup> See also pp. 279-280.



out of their common and united efforts "to drive Lindsey from the bench," and some of their letters were published in a local Roman Catholic weekly newspaper. Such was the cohesive force of fanaticism, intolerance and bigotry when consistently and honestly opposed. I was not fighting any church or any klan, I was fighting mass hatreds, bigotry, fanaticism and superstition, with all of its abominable "rackets."

For the good in all churches I had every proper respect.

This I believe is borne out in the chapter on my Notre Dame experiences where I came to know of St. Francis of Assisi, who preached to "Our sisters, the birds," but also was so practical as to insist that ideals were of no account unless put into practice.

And at the South-western Baptist University in my own childhood home of Jackson, Tennessee, where they also educated youth for the Baptist clergy, some of them afterwards became bigoted, fanatical prohibitionists or equally violent ku kluxers. But it was not true of our dear old Professor Irby there.

He introduced me to Socrates. One day he told us boys that Socrates had not corrupted the youth of Athens as his enemies had charged. He had only questioned the priestly claims for their pagan gods. And he counselled us to take to heart the advice of Socrates to a fair and fearless youth. As I recall it, it ran about like this:

"When justice is assailed, O Glaucon, fear not to come to her rescue and speak out in her defence, regardless of consequences to thyself, O Glaucon."

Socrates knew "The Dangerous Life."

But to return to some of the other delicious ironies that came to us with "those who came alone."

I shall never forget the saucy contempt with which a young flapper declared she would no longer go with a certain youth because he didn't "have nerve enough" to buy a popular brand of contraceptives. She belonged to the home of one of our socially elect who regarded us with scorn.

Nor the little aluminum can of these same contraceptives found on the floor of one of our influential churches and turned in to our court by a Sunday school girl. The pastor of that church had preached a sermon against these "maligners of our youth"—meaning the juvenile court judge.

Nor the son of a Sunday school superintendent, at that time an officer of one of my bitterest utility corporation enemies. His son came alone to us for treatment of a venereal disease of which his father had no suspicion.

Nor the pregnant daughters of two members of the choir of one of our largest churches, nor the worried sons and daughters of some of our most eminent clergymen from whose criticisms of my ignorance about youth and general dangerous character I had not been spared.

Nor the numerous confessions of youth that led me to conclude that perhaps more girls "went wrong" in automobiles on the way home from church than on the way home from the movies.

If I emphasize the fact that the church and the best homes were not exempt from the spirit of revolt, it is not through any desire to single them out for condemnation. I am not condemning at all—I am simply trying to tell the truth about a situation that I had an exceptional opportunity to observe at close range and the truth is that the so-called "new freedom" did not confine its inroads to the under-privileged classes in society. It broke through the circles of the comfortable and serene. It was at work, generally silently and unseen, in families safeguarded by religion and traditional morality.

I remember that a popular preacher of Denver protested that some of the things I was saying were not true, and, to prove it, he offered to send to me a young football hero from one of our schools who was athletic instructor of the gymnasium conducted at his church.

The boy came to me laughing over the humour of the situation, because in our confidential court cases, I had already had to deal with him for having intercourse with six girls, three of them members of one of his "gym" classes. In his own handwriting this boy had already given me his estimate that ninety-eight per cent of all the boys he knew had had intercourse with some girl. Remember that is not my estimate. It was his—and he is a member of one of Denver's best known church families that counts an eminent clergyman among its relatives.

I had a look into the hearts and homes of Denver denied to parents, teachers, preachers, who generally unfortunately knew little of anything of what was going on in the life of youth.

If youth came alone to our court with its confidences instead of to these same parents, teachers, preachers, it was not our fault—it was the fault of these elders who seldom had the wisdom to quit the censor's rôle and try instead the approach of sympathy and understanding.

I have said elsewhere that one of the reasons boys and girls came with their troubles to our court was that they were convinced our purpose was not to punish or even judge them. The same statement holds true, I may add, as to adults.

Nothing was plainer to me than the folly of punishment and the futility of judgments.

Of course, this viewpoint threw us into continuous and dangerous conflict with conventional minds—notably with the viragoes, the sexless woman, the aged neuters, found too often among the “social workers” and even the “woman’s deans” of co-educational institutions. Many of these were sadists out to draw blood. As a college girl once said to me, speaking of a “woman’s dean” of this type: “Judge, I’d never tell that old maid anything. If I admitted to her that a boy had ever kissed me, much less taken liberties with me, she’d say I was ruined and put me out of school. Or, if she let me stay, she’d like as not insult me by remarking, ‘I suppose you’re going to be a little hussy, too.’ She’d be sure I was ‘sinful’ at heart and would always be suspicious of me.”

As I remember these relentless busybodies and their interference with our efforts to understand and help youth I am inclined to accept the dictum of a distinguished ex-judge, the father of six children, whom a certain type of old maid was trying to persuade to back her bill in the legislature raising the “age of consent” from eighteen to twenty-one years.

“Miss Sally,” said the ex-judge, “the trouble with you is you have never been raped and you hate everybody who has been!”

One thing was certain—the girls who came to our court would have none of this type of moralistic old maids. My wife and our girl officers had asked hundreds of young women whether they preferred to be tried by a man or a woman judge or treated by a man or a woman physician and almost invariably they declared a preference for the opposite sex.

A survey conducted over a period of years by our girl officer, Miss Vincent, and my wife corroborated my personal findings. I feel certain that one of the main reasons for this practically unanimous preference was the fear and distaste entertained by these women and girls of having some pitiless strait-laced sister sitting in moral judgment upon them. And I hasten to add that *the right kind of a woman or man*—regardless of sex—is what is needed most in this kind of work for human beings.

As a sample of the antagonism we encountered in our court work from the sadist elements I recall the Women's Protective League, an organization with a limited leadership of funny old maids. The announced purpose of the league was to protect girls against men. During the world war these women thought the circumstances particularly called for such protection. Although, amazingly enough, the girls themselves didn't want to be protected and there was nobody they hated more than the members of this same league.

I remember the case of a girl suspected by the Women's Protective League of having had improper relations with a soldier with whom she was very much in love. While the girl denied the charge, some evidence to the contrary was brought before me by the league, which was very anxious to convict the boy of a statutory offence and have him sent to the penitentiary. Incidentally, I should say this was not the desire of Miss Vincent, our wholesome-minded woman officer, who felt a genuine sympathy for both the boy and the girl.

It happened that this young soldier was as good-natured as an unpedigreed dog but as ugly as a mud fence. At the informal hearing the committee from the Women's Protective League sat in line to stare at the judge or jury—as the case might be—for whatever influence they might have in "corrupting justice."

"Peggy," I very carefully said to the girl as we got under way, "Miss Vincent tells me that this beau of yours is about the ugliest creature she ever saw."

Perhaps sensing that I meant to be humorous rather than serious, Peggy was at first only mildly resentful. But her loyalty soon got the upper hand and she blurted out:

"Well, Judge, he ain't very beautiful but he certainly was good to me!"

Whereupon the committee from the Women's Protective League suddenly back-slid from their desire to punish that youth and, regardless of the three guardsmen, bounced up as one man—or woman—wrathfully exclaiming almost in unison:

"Well, if that's the kind of a girl she is—the little hussy—we don't care to have anything more to do with her. Just let her get ruined and see how she likes it!"

The case was straightened out to the satisfaction of the parents of the boy and the girl as well as to the boy and the girl themselves. And that was all that mattered.

I hope my differences with the Women's Protective League and with individuals of like viewpoint are not misunderstood. In cases of genuine rape I have always been so wrought up that if I allowed my emotions to control I could pull the other end of the rope. But the vast majority of the sex cases that are troubling youth to-day fall in an entirely different category no matter what their statutory classification. They are often of the 50-50 kind or at least of such a character that it would be unjust to shift the responsibility entirely upon the male.

Over and over again I have seen irate parents lose their passion for prosecutions and penalties after I had set forth the exact facts as frankly confessed to me by the supposed "victim," of an assault and they would agree with me that the wisest way out was to have the matter adjusted privately in the unofficial procedures developed in connection with our court.

Earlier in this chapter I have spoken of my conviction of the "futility of judgments." This conviction was, of course, closely aligned with my growing belief in the injustice and the folly of "punishment." After all, in our "doctor's office" (for that was what our court really became) we could not avoid the technique of science. And science was cautious of "judgments"—indeed, science, if it stood for one thing more than another, stood for "suspended judgments."

And so, no matter how exasperating the fact might be to the representatives of entrenched legalism and ecclesiasticism, I could not guarantee the truth of their favourite platitude, "The wages of sin is death." For my observations in our court and my personal contacts and correspondence with thousands of youths all over the world convinced me that

very often the "wages of sin" is exactly the opposite of "death." I could not be honest and ignore the fact that some of the finest wives and mothers I had ever known had had sex experience in their high school or university days or in a corresponding period of their youth. And I had to protest against a system, whether it were of church or school or home, that persisted in lying about these matters.

I had to protest, too, against the damnable attempt to instil fear as the remedy for "sin" when I knew there was so much more to be said on behalf of culture, good taste, consideration for others and simple observance of the rules of the game.

After all, wherein lay the "ruin" that followed these "sinning" boys and girls, particularly the girls? As I studied the thousands of cases that came before me in our court, candour forced me to conclude that the "ruin" was much more often the result of being "found out" than of the "sinning" itself. It was the result of being made the victim of serpent-tongued gossip and the social ostracism and destruction of morale that went with it.

As I faced the situation frankly, I could not ignore the fact that "being found out" generally followed an unwanted pregnancy or a venereal infection. If these things were avoided, I have known of hardly any cases—in fact, I don't recall a single case—where harm came to the girl any more than to the boy.

Furthermore, I knew that for every average intelligent girl "found out" there were at least twenty never "found out" either by parents, school, church or state, and these twenty seemed to get along pretty well in the world. They usually married, became loyal wives and mothers and good home makers.

Occasionally in these cases of discovery I have met parents who were capable of sympathy and understanding and who were able by their wise co-operation to ward off much of the harm that might otherwise have come to the "sinners."

Now in thus frankly discussing these illicit relations of youth I am, of course, not approving nor recommending them. I am simply trying to evaluate them correctly. As a thinking, observing human being I have to recognise the passionate erotic urge of youth and I do not propose to be

unduly shocked at it nor to play the hypocrite and pretend to be shocked.

Moreover, so far as youth itself is concerned, it would do no good to be shocked or to pretend to be shocked. Youth lives and moves to-day in the light of science and you can't convict it of "sin." Such holy platitudes and superstitions as "The wages of sin is death" and "Be sure your sin will find you out" it regards as so much pure bunk. The stupid motive of "Heaven for right" and "Hell for wrong" and the promise of happiness hereafter instead of here—all the silly bribes of the immorality code (as it should be properly known)—are becoming as extinct as the dodo. The persistence of church and school in peddling their outworn jargon calls forth only the contemptuous jeers and sneers of modern youth.

Happily the church, at last, is beginning to yield in some quarters and is trying to substitute for all this nonsense a more wholesome moral code founded on culture and good taste, kindness, sympathy, charity—real consideration for others—and the hope of heaven here as perhaps of greater importance than hereafter. . . .

This new appeal, I am convinced, will be effective. For youth is not headed toward an abandonment of morality. It is headed toward a change in morality—toward a new morality that will better meet the needs of the world in which it is living. This conclusion is reached not only from my direct contact with the boys and girls in our court and the students of many of our higher educational institutions but from letters from youth in various parts of Great Britain, Europe, Asia and South America. The prevailing attitude, I can truthfully say, is not one of reckless braggadocio. Rather it is one of profound reverence and it is marked by a truly pathetic desire for understanding and sympathetic counsel.

The moral change of which I am speaking is generally recognized by students of the Machine Age. As is so forcefully brought out in Floyd Dell's recent volume, *Love in the Machine Age*, the patriarchal scheme of things is not only going—it is gone. And with it the old-time home, never to return.

But it doesn't follow that much or even most of what has been recognized as "good" in that system must go

with it. On the contrary, this so-called "good" may show an increased vitality under the new environment—I am thinking, for instance, of true monogamic marriage in a society that recognizes the legality and morality of birth control.

Unquestionably some of our present attitudes toward, and penalties for, "sin" will go, as they ought to. Certainly the social blight that now accompanies illegitimacy should be greatly mitigated, if not entirely destroyed. For this social blight, together with the present lack of knowledge of birth control, is responsible for an abortion rate that in America, at least, constitutes a national menace.

At the present time we are assured by competent authorities that there are not less than a million, and perhaps even more than two million, abortions in and out of wedlock performed on women annually in America.

Several years ago, knowing as I did some two dozen abortionists among the doctors of our city and having a confession from one of them that he performed more than 300 legal operations a year, I ventured the prediction that there were at least 1,000 annually in Denver, a city of 300,000 population. A local newspaper, then antagonistic to me, sought to sensationalize the statement for news purposes by challenging it.

One of our most highly respected physicians, then a member of the local medical association's "committee on ethics," told me he was approached by a reporter from this newspaper with a request for a quotation in opposition to my estimate. He said he explained to the reporter that the rules of his profession forbade his being quoted. The reporter, offering to conceal his identity in a mere reference to his standing in the profession, got this statement, according to the doctor:

"You can say for me—not using my name—that Judge Lindsey is wrong. He should have stated that in all probability there are at least 2,000 illegal operations annually in the city of Denver."

That, as the doctor explained to me, was not what the newspaper wanted and so the subject was dropped without any challenge to my estimate.

Surely the new morality will not countenance any such toll of butchered women and murdered infants. Surely



it will not hesitate to attack any and all causes of such appalling conditions.

In concluding this chapter let me say that I do not view the problems of our changing order in any mood of despair. For as I look out over the world, I find ample proof that youth is thinking. It is no longer content to be told what to think—it is thinking and *thinking it's own thoughts*. It is reaching out for leadership, of their incapacity for which the elders have been furnishing such constant and cumulating proof, and I believe it will have a much better chance than the elders to find the road to whatever heaven there may be.

I am reminded of the story of an evangelist and his encounter with a Denver newsboy. The reverend gentleman was holding revival services in the auditorium and had ventured out on an excursion to the post office. The city was new and strange to him. Presently he found himself in the wrong building and hopelessly lost. Outside he accosted the newsboy.

"Sonny," he said, "I've lost my way to the post office. Will you show me the way?"

The little fellow, after the fashion of our newsboys, courteously conducted him to the steps of the desired building a block or so away, when the good man, thinking to return the compliment, said:

"Sonny, I'm preaching to-night over at the auditorium on 'The Way to Heaven.' Won't you come over and hear me?"

Young America, turning half scornfully on his feet, exclaimed with mild derision, "Say, Mister, dhe guy dhat can't find his way to dhe post office would have a hell of a time showing me dhe way to heaven!"

The elders have been much concerned over "heaven" and the "morals" that are supposed to guarantee entrance to it. But they have shown that they know little or nothing about the "way to the post office"—happiness in the here and now and the kind of living that makes it possible.

It's the best and shortest "way to the post office" that the boys and girls of to-day are vitally interested in and no "guy" who doesn't know it can talk to them about the road to a distant—and hypothetical—heaven.<sup>1</sup>

<sup>1</sup> It might be argued that the elders have an even less valid claim to leadership than the evangelist in this story because he, at least, was sure about

## CHAPTER X

## SCIENTIFIC ROBOTS

THE ranks of the social workers are full of them—scientific robots, jabbering always of records, statistics, standards and the need of more workers to roll up more records, statistics, standards.

We kept case records in our court but I have always said I would desert a case record any time to meet an individual human need.

Records, statistics, standards were not an end in themselves. They were only tools to be used in the service of human beings. When they became an end in themselves "social work" degenerated into a prying impertinence against which the poor and the unfortunate had a right to protest with all the vigour at their command.

Certainly I protested against it—as I protest against it here. And I do so not only because it is often an uncalled-for indignity against suffering men, women and children, but because it is so largely useless. To me there is nothing more ridiculous in the world than some of the cocksure diagnoses based on the inadequate data of these case records.<sup>1</sup>

Of course, not all social workers are guilty of the cold and unimaginative approach of which I am complaining. There is, I am well aware, an aggressive minority bent upon changing the viewpoint of the profession but generally speaking it has made little headway.

When the conventional social workers came to visit our court or when I met them in my travels over the country

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his "road to heaven." Actually, the elders to-day not only know nothing about how to get to the "post office" but they are confused as to the "road to heaven." Note, for instance, that one element in the Christian church now favours the legalization of birth control on the ground that it is in the interest of "morality" while other elements oppose it because it would "promote immorality." Then there are the fundamentalists insisting upon the absolute verity of the Good Book from "Kivver to Kivver" while the modernists characterize most of it as more or less "Santa Claus" and fable.

<sup>1</sup> Some of these snap-shot judgments are not one whit nearer the truth than is that exploded explanation of unemployment—"Some folks won't work."

I found them as a rule generally interested in details of office routine, paraphernalia, systems of statistics, records, standards. Only rarely did they seem much concerned about the "human artistry" we were trying to perfect. Seldom, if ever, did they, for example, ask any of the following questions:

What is the psychology of getting truth, instead of falsehood, from boys and girls—yes, and from adults?

How did we lift the spirit of fear?

How did we get the response of pride and loyalty?

How did we get them to come to us alone when they were in trouble or exposed to trouble?

What was our technique in sending hundreds of prisoners alone to various institutions—that is, without officers or the ordinary restraints of violence? Why was this a good thing to do? How could it be used in the work of strengthening character?

What is the difference in the effect of the artificial restraints, coercions, censorship and prohibitions of the law and the natural restraints?

How did we avoid the dangers of brutality and the dangers of leniency?

How did we employ the powerful stimulant of praise so as to strengthen and not spoil the child? Why was it more important to praise the child for the "good" he does than to condemn him for the "evil" he does?

How did we manage to find something good and interesting for the child to do so that someone could be pleased with the good he does?

Why is it that the system as we find it to-day generally affords no technique or methods of praise but only of blame and condemnation?

How do we apply what we call discipline?

How, in using the forces and powers of personality in dealing with human qualities, did we also bring to our aid the work of the psychiatrist, the physician, the specialist and expert in mental and physical hygiene and health?

What are the causes of conduct or behaviour—sociological, biological, psychological?

In general, how were the discoveries of science helping in human artistry? Should we be more interested in health or morals, in good sound bodies here, or souls hereafter?

No, generally they were not so much interested in these things. The human achievements of which we were proudest left most of them cold and unmoved. Misunderstood, as they frequently were, what those achievements seemed mostly to arouse was their envy and jealousy. They did not want to use or understand them. What they wanted most, if they wanted anything, was to belittle, deny or discredit them.

As I have discussed our work with these statistical standardizers, these enemies of human sympathy, love and understanding, I have always been baffled as to their aims. The practical results of their work, however, are somewhat clearer. You can find these results in the aloof stares, in the curt and even insulting inquiries, in the countless dodges and evasions with which a certain type of social workers on the job are daily meeting the desperate appeals of suffering men, women and children. Only to-day a white-faced woman came to my door to lay before me indubitable proof of the worthlessness—and worse—of the social contribution these statistical standardizers are paid to make. I greeted her with kindness.

"A friend of mine told me," she said, after she had been placed at her ease in our home, "that I could see you even if I could not see the judge." (She was speaking of the gentleman who succeeded me in the juvenile court.)

"Do you mean to say he wouldn't see you?" I quietly inquired.

"Yes," she replied, "a young woman at the desk snapped out something about seeing some other woman. I had hardly started to tell her what I came for when she said: 'Oh, you will have to get a lawyer.'

"'But,' I said, 'I want to see the judge. I have no money to pay a lawyer.'

"'I can't help it,' she told me. 'You can't see the judge—he's busy.'

"'But,' I said, 'I can come most any time.'

"'Well,' she said, 'you can come if you want to but I don't think you'll ever get to see the judge. He doesn't see people that have cases here—he might have to try them.'

"'But,' I told her, 'there is nothing to be tried. It's about the father of my children—children that he's doing nothing to support. He has gone to another city.'

"'Well,' she snapped, 'why don't you go along, why don't you join him? We can't do anything with him here. You might do something with him where he has gone.'

"She might as well have said, 'Why don't you go to the moon?'

"'I haven't got any money to follow him to San Francisco,' I told her.

"'Why don't you see the district attorney?' she asked.

"'Oh,' I said, 'that's what a man up here told me the first time I came—it was a little after closing time and no one else was here. He DID listen to me and said: "You should go to the district attorney's office." And I told him: "Say, I've been over there two or three times and they said for me to come up here." I'm sure I can get something done if I can see the judge.'

"'But you can't see him,' the woman said.

"'But I must have support for my children,' I said.

"'Then why don't you go to the charities?'"

"'I've been told that before,' I answered, 'and I've been there but they said I came to the wrong charity. And they sent me to another one. And at this other one they said: "Why don't you know we are the Community Chest and we don't grant individual charity? Our charity goes to institutions. Why don't you go to the county hospital and ask for the city board of charities and corrections? They will put you on the Mother's Fund—that is paid for by the taxpayers. Our money comes from private sources—it is not for cases like yours."'"

I broke into her story at this point.

"Have you been to the county charities?" I asked.

"Oh, yes," she replied wearily.

"And what did they do?"

"They wrote to my husband or to some charity in the town where he is. And they got an answer back that my husband said one of the children was not his. Wasn't that insulting?"

"The next thing I know a woman that claims to be connected with that office comes around to where I live and is talking to my neighbours. She asks them if they know anything about the man I was living with——"

She paused a moment and then went on indignantly:

"Think of the insult! I go to get help but I only get insults. I feel like getting a gun and going out and killing

that—old cat! I bet she ain't got any kids of her own. . . . I happened to be home one day when she came snooping around and I asked her why she wanted to start all that gossip about me—didn't I have troubles enough already? I felt like hitting her, but I didn't. Gee, she was a cold fish! She said I'd have to answer a lot of questions—that she was not to blame for what my husband said and if I had been living with another man they had to find it out because they had to know the real father of the children. Now what do you think of that—when my youngest child is 10 years old and my oldest seventeen?

"Then she begins to tell me what to do with my family.

"Why don't you put that fourteen-year-old boy to work?" she asks.

"But," I told her, "he is a bright boy and I want to get him through the high school. He is ambitious for an education."

"Well," she says, "he has got no right to go to high school. If he has finished the eight grade he can get a job."

"I thought when I was a mother of four children—and they are bright children, too"—as she swelled with pride—"I at least ought to have a little help to give them what I never had, a good education, especially when they were crazy to get it. I only want a little help. If they could only make him pay just a little bit we could keep from starving and get along. I don't want my boy to go to work if there is any chance for him to finish his high school. He's a bright boy, Tom is—I want you to meet him, Judge."

"Sure," I told her, "I would like to meet him and I think he ought to have an education."

And then, sensing her deepest inner need at that particular moment, I went on: "You see, my dear mother, I think you are perfectly wonderful. Of course, I know you are a good woman, just from talking to you, and I know what brutes some husbands can be. Anyone should know enough not to bother you with that mean charge your husband made against you. Anyhow, all our laws are for the benefit of your children. The main thing is to help them, even though in doing so you should be helped, too—in fact, that is often the best way to help children."

She was drinking in my words—the words she should have heard from the so-called "social workers."

"By the way," I asked her, "did you see the lawyer?"

"Yes," she answered, "and he said I had a very difficult case, one that would take some time, and he couldn't handle it unless I could pay him something. I told him I'd come back and tell him what I could do. But when I went back he couldn't see me. . . ."

"Then I went again to that court and asked if I could see the judge. I told them I had been about six places and every one had told me to go somewhere else.

"One day when I was up there I saw the judge come in—he passed right by me back to his office but he looked away from me. I kind of thought that if I just sat there again long enough I might get to see him. And so I stayed for nearly three hours, until it was about lunch time, and one of those women came in and said: 'You cannot see the judge—he's got a lunch engagement.'

"But can't I see him for just a minute?" I asked. "Maybe he will fix a time when he can talk to me."

"No," she said, 'he's gone.'

"I said: 'Are you sure?'"

"Well, I'm pretty sure," she answered, 'but I'll see.'

"I saw her go back in his room, and shut the door and then she came out and said: 'He's gone.'

"Then I went out into the hall. I was thinking how I wasn't going to get any lunch, like the judge was, because I had just enough money for carfare home. And just then who should I see but that judge going out the back door!"

Well, what was wrong with this picture? About everything. Crushing down the rage the woman's words had aroused in me and mustering all the kindness I possessed, I did my best to heal her wounded self-respect. I told her what a splendid mother she had been—and what a fine woman. I said that any woman who, under the handicaps of her life, had brought to beautiful fruition four fine children, was, in my judgment, as she should be in the judgment of the state, far more "respectable" than if she had written a book or carved a statue.

I tried to give her a clear idea of the state's obligation to her. I told her how if the state were imperilled by war it would take these children from her as nurses or soldiers and send them to the battle fronts of the world to give up their health and their strength and their very lives, that she

had given a lifetime of effort, pain and suffering to protect and how now in her peril and distress the state owed a duty in return to those children and to her.

What she had been asking of the state, I assured her, was not charity at all but merely the right of her children.

I said that the pity of it all was that we had the finest kind of laws on the statute books of our state, such as the children's aid laws and the maternity laws that recognised the absolute right of her children to help from the state. But that nevertheless the state actually spent more money to guarantee the health of pigs and cattle and to protect the fish in the streams for the joy of sportsmen, generally rich and well-to-do, than it did on behalf of imperilled childhood.

She was entitled to the truth and so I told her that in cases like hers I had, when judge, often written to the officers of cities in other states and asked for their co-operation.

"When these outside officers," I explained, "know that the judge and officers in your home city are keenly interested in your case it helps a great deal."

I told her that the law of our state provided that the jurisdiction and trial of cases against husbands who would not support their children should be where the mother and children live and not where the father lives, even though the offence, as in the present case, might have been committed where the father lived. Much could be done in any event with more interest in her than in mere case sheets and technicalities. Colorado, I was proud to inform her, was perhaps the first state that wrought that revolution on behalf of motherhood and childhood.

The law, I said, had proved in practice very effective in many cases and I believed it would be in a case like hers.

I told her that her case would be greatly strengthened if it became known that the judge was going to send the officers of his court to a city in another state—at the state's expense and not hers and without the need of any lawyers—and bring her husband back for trial unless he were willing to give absolute guarantee of support for his children. There were many such cases, where the husband, regardless of legal technicalities, yielded and did his duty.

If, I said, the state should be unable to compel compliance from the father of these children with the law made for their



protection, then as a judge, I would certainly consider it my duty under the law to see that the state give her the help her children were entitled to.

And then I took another tack.

"From what you tell me," I ventured, "your children must be 'effectives' and not 'defectives.' This, I should say, should be a point in your favour, but it seems to be a point against you. Our state, as it is compelled to do, has spent millions of dollars in the care of its 'defectives.' And I should say it should perform its duty in the case of your 'effectives' so that they may not be penalized for being ambitious and their mother insulted for having performed what is in these times the rather exceptional service of adding four promising citizens to our commonwealth."

As we went on in our talk I told this woman that it was perhaps because of the views that I entertained toward her problem and other problems presenting equal absurdities that I was no longer permitted to have a part in the work of the state for the protection of mothers and children. And I continued by the way of warning:

"I can only suggest to you a few things which, if taken as 'legal advice,' might subject me to punishment for contempt and cause me to be clapped into jail by our august supreme court which has never done anything for women or children but, on the contrary, has generally upset laws in their behalf whenever it could. So it might be well for you to keep what I have told you under your motherly bonnet."

Well, at the beginning I had seen the fires of indignation in her eyes, the suffering on her face, but now, through a bit of sympathy, praise, charity, appreciation—of which mothers get so little—she was transformed by a confident calm.

I humbly apologized for not being of more assistance to her. I realized, I said, that I had been able to do little in my handicapped condition. But she protested:

"Oh, but you have done everything for me. You have made me feel so different. You have made me feel that I'm not really a dog, after all. I am so grateful—you have helped me so much!"

And I was reminded again of the example of Jesus when he bent above that stricken girl in Jerusalem, beaming upon her with tender compassion. Even though she was what the world called a bad woman, he did not reach for the book of

standards nor get out his case sheet—he was not a “cold statistical Christ.” He asked no questions, he made no investigations. He only loosed upon her the radiance of his love and understanding: “Neither do I condemn thee; go and sin no more.”

He met her need and sent her forth a free woman, unscathed by the quibbling, scribbling scribes and pharisees.

The social workers have much to learn of this man, Jesus.

## CHAPTER XI

### ENEMIES OF THE FAMILY

IN a previous chapter I have said that the “patriarchal scheme of things” is passing and with it the old-time home, never to return.

The family, as we have known it for generations in America, is undergoing change. To me it is a matter calling for serious reflection rather than for easy exultation.

The civilization of the Machine Age has brought us certain social gains such as the economic freedom of woman and the abolition of conventional lies and superstitions that contributed to a false morality. In that way it has improved the moral tone of the family and strengthened the family as an instrumentality of human progress.

But this same Machine Age civilization has been ruthlessly at work undermining and mutilating the family through the never-ending exploitations of the profit system and it is destroying much of the family's capacity for good.

Now, no matter what my enemies may have said about the matter, I have never been a party to any war on the family. On the contrary, through nearly thirty years work in the juvenile court, I have battled ceaselessly for it. I have tried to free it from the brutalities of ignorance and superstition and thus make it a more vital force in the world. I have steadfastly resisted the individuals and influences that were attacking it and, with the help of my friends, have more than once compelled its enemies to keep their hands off it.

As I see it, the family is the best institution so far devised for the protection of the child. I know some eminent

behaviourists and specialists in education have foreshadowed a time when there would be no need for such an institution because the state, through its experts, would take over the care of the children, leaving only the function of procreation to parenthood. Plato in his "Republic" was, I believe, one of the first to suggest such a plan. While there is much to be said in favour of it, my observations of the child in the family as compared to the child in the state institution have led me to want to protect as far as possible the rearing of the child in the custody of its natural father and mother.

I am well aware of the evils and abuses of the emotional factors in the relationship of parent and child but these I believe are due more to the ignorance of forces now being made clear to us through the sciences of physiology, psychology and psychiatry than to any inherent defect of the family system.

I proposed to remedy such evils and abuses through education for parents. Since education is compulsory for children, I thought, why not for parents, especially in those matters of sex and life and care of children in which most parents are so ignorant? I suggested it be mildly compulsory even though I would prefer that in its appeal to interest it should rather be compelling—as in time I believed it would be. But when, more than a decade ago, I introduced a bill to this end in the Colorado legislature it was met with ridicule and scorn from the dominant reactionary forces and failed of adoption.

Nevertheless I believe the programme I then advocated will yet be realized. There has been since that time a steadily increasing stream of lectures, pamphlets, books, and study courses on education for parenthood, indicating at last the public recognition of a need. The education of children, I am reminded, was carried on by private agencies a long time before it was recognized as a public function. The education of parents will take the same course.

Whatever may be the theoretical arguments in favour of the family, there is nevertheless a definite trend in the Machine Age toward the break-up of the family and the abhorred "nationalization" of the child. And, ironically enough, the same reactionary influences that are most loudly protesting against this process are contributing most powerfully to it.

Here, as I see it, are some of the responsible factors:

1. Due to defects in our educational and economic system, those who are less favoured economically are bearing most of the children and those who are most favoured are bearing the fewest. The result is the increasing "subsidization" of the home by the state—the first step towards "nationalization." I find a striking example in Los Angeles county in which a large percentage of the low-wage Mexican families, with their many children, regularly depend upon the county government for food, clothing, rent and medical attention. Doubtless other cities will furnish similar cases. Another example is the activity of the public schools and the parent-teacher associations in supplying milk, often on the school grounds, to the undernourished children of the poor. The family income is too low to enable the family to sustain itself as an independent unit. The state is forced to intervene. And many of our states now have what are properly known as "mothers' or widows' pension laws," however much of a misnomer that term "pension law" is.

2. Those who are bearing the fewest children and are most favoured economically are in league with the reactionary elements of ecclesiasticism and legalism that are bitterly hostile to social changes necessary to correct this condition. For instance, as a rule they oppose birth control—as they oppose an adequate wage, a five working day week or a five working hour day.

3. Our statute laws dealing with human conduct are almost entirely for the protection of property and without any consideration for the protection of the family. Indeed, they are often so drafted and enforced as to break up and destroy the family—throwing upon the state the burden of looking after the remnants in its charitable institutions, jails, reformatories. "Nationalization" with a vengeance!

Illustrating this last factor I recall the case of a man taken from my court notes which I presented to more than one legislative committee in my appeals for changes in our laws. This man, neither a husband nor a father, had forged a cheque for \$500 on one of our leading banks. No one dreamed of raising a question about the county authorities promptly sending an officer to a far eastern state to bring him back to be prosecuted for a felony even though the expense to the state was around \$1,000. The bank had to be protected in its custody of the \$500.

But if the man had been married and had fled to that same state to dodge his responsibility for the support of five children we would, in most of the states, have run up against a law that made that offence only a misdemeanor for which the man could not be brought back at all; and under no law would he be returned with any such certainty for the support of his children. The protection of a bank was, in practice, of far greater importance than the protection of children.

I remember the difficulty we had in Colorado to make that offence a felony. And I recall that even after we got the law which gave us the right to bring the man back the state authorities knowingly and deliberately nullified it by refusing to furnish the necessary funds for transporting him. The rights of property were still superior to the rights of little children.

Here, too, was the case of a father of five children who had been sent to the penitentiary for five years for forging a cheque for less than \$200 on a local bank. My attention had been called to the matter through the appeals of the mother of those five lovely children. From time to time she had come to me tearfully protesting against the injustice that had been done her and her children in being deprived of their rightful support. And I told her she was absolutely right.

There was no question but in that case the vengeful state had turned criminal. It had ignored one fact, by law just as important as the protection of the bank—namely, that the father was required to support his five children. So when it sent him to the penitentiary and deprived his family of nearly \$5,000 worth of support it compelled him to commit five felonies. And I may add that if he had willingly committed any one of these felonies and we had chosen to take action against him under the punitive criminal instead of the chancery court civil procedure (we could have done either in Colorado), he could have been punished by imprisonment in the same penitentiary in which he was confined for the offence against the bank! Of course our plan would have been in the interest of the family, to keep him out of the penitentiary, if possible, in either case.

I remember, too, the case of a mother who faced a penitentiary sentence that would have robbed her four children of their livelihood and home. By impersonating another

woman and taking advantage of her charge account, she had obtained several hundred dollars' worth of property from a dry goods store. It was a felony under the law—but so, too, in certain cases would have been her failure to support her children.

Well, in warring against the enemies of the family we struck at these absurd and unjust laws. We developed a new doctrine that finally won official recognition from the state—the right of the child to its parent. Why should the child, we asked, be robbed of its parents to enable the state to wreak vengeance upon them for the invasion of the property of the bank or the department store?

Of course, the bank and the department store should be protected but so should the children. And if one or the other had to give way in that process of protection I contended it should be the bank and the department store and not the child. The state, obviously, had its beginnings, not in the department store or the bank, but in people—in the child. And the rights of the child and of the family which nurtured it should come first—a thing that didn't happen when through this process of protecting the bank and the department store the family was destroyed.

In our efforts to safeguard the integrity of the family and the rights of the child I finally secured the adoption by the legislature of the so-called Redemption of Offenders' Act. This law for the first time gave the state, through its agent, the prosecuting attorney, the right to elect to bring certain cases exclusively into the Juvenile and Family Relations Court, which had now become our official institution of family relations.

The court, under this new act, had the power to order the offender to restore property or the value thereof to the owner, to refrain from a repetition of his wrongful conduct and otherwise to persist in good behaviour. And in case of violation of such order, the court had the power to punish for contempt.

The result of this new procedure was that the bank and the department store received back their money or property—and without danger of "compounding a felony," as such restoration might have been considered under the old procedure—and the children received back their parents under the kindly aid and direction of the court and without those

parents being so much as charged with a crime, much less convicted of one.

The family was conserved and kept together. The state was no longer *particeps criminis* or contributor to the crime as in the stupid procedures of the past.

The authority of the court under the Redemption of Offenders' Act was limited to lesser offences, mostly against property rights. It did not reach the major crimes for which men and women had been committed for long terms in our various penal institutions. There was, however, no reason, from our viewpoint, why the doctrine of the right of the child to its parent should not be applied within prison walls as well as without them. Our aim was to protect the family and the need of the dependants of these major offenders was as great as the need of those we were helping under the Redemption of Offenders' Act.

And so I urged the enactment of laws requiring both the county and state authorities to furnish paid employment to their prisoners, the earnings to be used for the support of dependant wives and children.

Some of these proposals affecting county prisoners were adopted but we soon found them utterly and hopelessly nullified by timid officials who feared they might raise the tax rate and thus interfere with the success of a political administration at the next election. They became little more than scraps of paper. Family success was of no consequence if it interfered with political success.

Similar items of legislation as to the state penitentiary were fathered and promoted by Thomas J. Tynan, one of the most efficient wardens that institution ever had. I recall a bill providing for a Portland cement plant at the penitentiary in which it was proposed to employ prisoners in the manufacture of concrete for the state's highways, turning over the prisoners' wages for the maintenance of their families. Although the penitentiary was located right up against one of the finest lime quarries in the state and it was conclusively shown that the state could produce the cement for a small fraction of the price charged by the cement trust, this bill, through corrupt influences, was defeated over and over again.

We found it always opposed by the agents of the corporation powers whose selfish interests it threatened.

I recall that a certain eminently respectable member of the bar, who would have felt terribly insulted if any one had questioned his championship of the family and the child, was a large stockholder in one of these cement companies. I do not know whether he—and others like him—actively participated in the corruption of legislators and other state officials to defeat our efforts for the protection of the family, but in my judgment they could not possibly have been ignorant of the fact that money was freely used for such purposes.

I cannot forget the dramatic contest that for the first time promised victory against the corrupting influences of the cement trust's lobbyist. The vote would be close, we knew, but we believed we might win by a narrow margin. Before the final roll call, however, a member upon whom we had counted rose and bolted the assembly.

His act defeated our bill by one vote. Surely the significance of that betrayal could not have escaped the astute gentleman who sold cement to the state at many times its production cost!

I recall, too, the fate of the very profitable farm owned by the penitentiary and run mostly by the prisoners who had family responsibilities in the outside world. To those of us who were working and planning to protect the family from the consequences of the unsocial conduct of its members this farm was a promising asset. Yet it was wantonly and—if open charges made at the time were correct—corruptly sold by a vicious state agency to a group of bankers who had long coveted it and at a price so inadequate as to provoke a public scandal.

But it was not entrenched greed alone that made war on the family. One of its worst enemies was the ignorance and prejudice of honest conservatives which subjected them to unreasoning fears of the "radicalism" of social change. When I prepared a bill for the legislature of 1909 providing for the payment to mothers or others for the care of children in arms whose fathers were dead or had deserted them, it was regarded as so revolutionary that I was urged by some of the leading members of our women's clubs not to introduce it lest its "unheard of" demands should cause not only its own defeat but the defeat of other measures for the protection of the family seemingly less "dangerous."



We did not secure the passage of this law until 1912 and then only through a direct appeal to the people under the initiative and referendum provisions of the constitution in which we had the personal help of Colonel Theodore Roosevelt, then campaigning in the state.

Probably no other evil of modern industrialism has had a more devastating effect upon the home and family than child labour. In theory, the home at its best was an institution which nurtured and protected the growing child from the destructive forces of the world about him. Child labour ruthlessly smashed the walls of this ideal institution, wrenched from it its tender charges and forced their unformed bodies and minds into the cruel long-drawn-out and deforming tasks of field, workshop and factory.

Of course, I fought child labour. But I found that my efforts here to protect the good that was left in the "patriarchal family" were not appreciated by those who, judging from their loud platitudes on the sanctity of the home, should have been my warmest supporters.

The state supreme court, following its usual tendency to destroy legislation interfering with the rights of property, had declared unconstitutional our first law for the protection of women and children in industry. It had given a purely technical and vague excuse but we were nevertheless left for several years without any law at all covering child labour.

I remember that the agitation for women suffrage, in which I was privileged to play a part, was then at its height over the nation. The state of Colorado already had given women the right to vote and I was greatly embarrassed to have to admit that notwithstanding their enfranchisement we had for a time during that period no proper child labour law prohibiting or even regulating the exploitation of youth for profit.

Declared unconstitutional several years before, by our supreme court, it was not until 1911, and only after a desperate fight, that we finally secured the final adoption of this badly needed legislation and it was then grudgingly conceded by those that represented the powers that owned the legislature only after it had been amended so as to exempt from its operations the children working directly or indirectly for that politically powerful corporation, the Great Western Sugar Company.

One of the chief supporters of this exemption was a prominent preacher of a religious denomination that was strong in the beet sugar sections of the state. And I may say that his attitude was in perfect accord with that of influential churches and school authorities in these sections who were not only willing to see the children deprived—in the interest of greed and profit—of their right to family care and public education but who zealously saw to it that they were so deprived by the judges, district attorneys and every other law-enforcement agency of the system.

I knew who the real enemies of the family and the children were and I did not fail to point them out in legislative gatherings and in conferences of social workers.

There were seldom, if ever, any denials of my charges and I frequently forced admissions of their truth. I remember well the judge who in one of these heated controversies said:

"Oh, of course, we could remedy the situation under some of the laws you have written"—he was referring to the contributory dependency and compulsory education laws, which, if enforced, would have taken the child out of the beet fields—but "we fellows have got to hold our jobs. The minute we start anything of that kind we would not be nominated on the party ticket, much less returned to office at the next election!"

It was not for nothing that the great sugar barons contributed liberally to politics!

At a committee meeting of social workers following a state conference on legislation in the interest of the family one of the principal officers of our Community Chest exclaimed indignantly:

"Why, don't you know that we can't afford to have anything to do with this Lindsey bill?" (They always called my proposed measures "Lindsey bills"—the name was a guarantee of bitter opposition from the "powers.") "Why, don't you know that Mr. So and So"—naming the Christian gentleman who was a high official of the Community Chest—"is one of the big stockholders of the Great Western Sugar Company? He would be terribly offended at us. You know the people he represents would be against us."

And consternation reigned in that little group, which, true to the "social worker" type, generally lacked the courage to fight a system for which they were the willing stretcher

bearers. And they tamely followed their leader—the “eminent social worker” whose fat job and comfortable salary depended upon not offending the resourceful churchmen and citizen who headed the charity “trust.”

I thus found church, schools, social workers, despite their unctuous pretences, conspiring against the family and the home. But I must not forget the “lawyers”—the bar, the institution of entrenched legalism—in certain aspects, as represented by the reactionary element, the most repellent enemy of them all.<sup>1</sup>

Industry, with the consent, and “moral support” of church, schools, social workers, disrupted the home—tore it asunder. This element of the bar picked at, and gorged itself on the pieces. When this type of “lawyers” got through,

<sup>1</sup> In discussing the evils of institutionalism, I do not mean that there are no sincere and honest members of that institutionalism. I know that many of them are honest and sincere—doubtless most of them. But generally it is only its minority members who protest against its evils, tyranny, injustice or questionable profiteering.

I despise the pharisaical attitude, but I must admit that I find myself entirely too lonesome among those judges who publicly will take any stand for social direction of the admitted habits of people in lawful marriage such as call for legalized and scientifically directed birth control, divorce by mutual consent, sex education and the like.

For several years I offered a reward for the name of one judge in the United States who would publicly admit he was for birth control, but no one claimed it. Undoubtedly most judges privately favour it.

One of the first public utterances of my own successor, at the time he took over the judgeship of the Juvenile and Family Relations Court, from which I had been turned out by the Ku Klux Klan, was that he was against birth control. As a matter of fact, is he against it? This sort of thing is in line with the conduct of a respected Ku Klux Klan mayor of our city, who would tell delegations of Jews and Catholics that he was not a member of the Klan, when he was. He directed the appointment of my successor.

Let us hope the time will come when getting votes under false pretences will be just as immoral as getting money under false pretences. But now it is generally considered clever—a virtue to be rewarded instead of a vice to be condemned. I frequently met lawyers, judges, social workers and those who (for their selfish purposes mostly) would merely put salve on social sores: “Yes—sure—of course you are right, Judge,” they confided, “but you should not say what you think. Look at me—I *don't*. I am not ostracized, outlawed, turned out or disbarred. I am respected. I belong to the club and the church. *They* support me at the next election. You can't win without them.”

A well-known Catholic priest, and personal friend of mine, said to me: “The trouble with you, Judge, is that you are *too* honest. We don't object so much to your favouring these things if you would just keep still about it. But you *will* talk about it. That is the trouble. Mother Church is suffering from people like you.”

And such is the “noble experiment” and example mostly offered to youth in this civilisation of schools and churches.

there was little or nothing left of the boasted institution for the protection of the child.

As example, I am reminded of that hoary writ of *ne exeat*, of which the bar was so fond. When I first went on the bench I found it a most important procedure in domestic relations work. A mother, suffering from the discords of an impoverished home and having suspicions that her husband is about to leave the state, goes to a lawyer. The lawyer files a petition for this writ in a court of record, reciting in an accompanying affidavit of "information and belief" the suspicions of the mother and the responsibilities of the father for the support of the children. The assault on the family is now on.

The sheriff's office arrests the husband and brings him into court to answer the charges against him. Generally the hearing is postponed and the husband, if he can't provide a bond, insuring his presence on the date set, is often clapped into jail.

The wife and mother is under the necessity of providing a fee for her lawyer and the husband a fee for his lawyer.

Of course, what is most needed in this case is that the money from both father and mother go to the support of the children but you never hear the sacrosanct bar saying anything about this.

In such a setting, rancour, bitterness, hate, flourish. There may be a kidnapping of the child by the mother or the father or the parents of either—in which case there is another hurried visit to the lawyer's office, followed by an application for a writ of *habeas corpus* or some other procedure, civil or criminal.

Finally comes the trial—usually before a judge as incompetent to work out the needed human adjustments as he would be to minister to physical or mental ills without the training and capacities of a physician or psychiatrist.

Business is fine for the courts and lawyers, but it's hard on the folks!

Watching the cruel farce, I was reminded of that somewhat ancient doctrine of *parens patriæ* with which I had become intimately acquainted during my experience as public administrator and guardian in those early days of 1899. The state as the "over-parent" had exceptional powers to protect its wards under legislation prohibiting

child labour and compelling public education. Why couldn't this power be extended to cases in which the parents or other persons charged with the care of the child had failed in their duties or in which there was a controversy between the parents over the custody of the child?

To me it seemed entirely feasible.

Moreover, I found while I was Public Administrator that I could accomplish much as guardian of the child, without the formality of jury trials, under the civil or chancery powers of the court through procedures for contempt for violations of its orders.

So without going into the technical details of the legislative enactments I was able to secure, I was soon on the road to a very simple method, strictly "within the law," of taking all such family difficulties as I have cited above out of the hands of the lawyers and out of the methods of the old-time courts and dealing with them almost entirely in my advisory and administrative capacity. The dependency and contributory dependency laws, unlike those of any other state, were drawn to make all the old-time *ne exeat*, *habeas corpus* and other hoary expensive proceedings unnecessary. They were simplicity itself.

Now, after this change, what did the troubled mother who had hitherto relied upon the writ of *ne exeat* do? Go to a lawyer? Not at all.

She passed up that precious right with its attendant expenses and incompetent procedures and came straight to the Juvenile and Family Relations Court.<sup>1</sup> There she told her story to her heart's content to the clerk, the probation officer, the domestic relations director, or—always, if she wished—to the judge himself.<sup>2</sup> Generally we telephoned

<sup>1</sup> Strictly speaking, she still retained the "sacred right" of an attorney. I was careful to safeguard our new legal procedures by a law that permitted both sides to these controversies to have all the lawyers they wanted. Also provisions were made for calling in another judge or obtaining a jury trial as a protection against bias or prejudice of the court. But rarely did either party avail itself of these "rights." Generally they looked upon lawyers and conventional court procedures as a useless and costly interference with what was for their best "interests." At times their "rights" actually conflicted with their "interests."

<sup>2</sup> As to the right of these troubled people to talk to the judge himself I was particularly insistent. And why not? If a prospective patient went to the doctor's office would she be allowed to talk only to the stenographer, the telephone operator, the doctor's assistant, when she found more satisfaction in consulting the doctor himself?

to the husband for a conference around the table and everything was adjusted without any legal proceedings whatever. But if that failed, then, on a blank form of chancery court procedure, dependency and contributory dependency petition, all prepared for her without the necessity of seeing a lawyer, much less hiring one, she set down her sworn impressions upon information and belief. And the law specifically provides there shall be no court costs in such cases.

And even with that much formality, instead of sending the sheriff out with a formal writ, we usually turned to the telephone and called up the husband at his work or wherever else he could be located. And I do not recall one case in a thousand in which that man did not comply as promptly with the informal request to come to our office as he would have complied with a doctor's summons to discuss a family health problem.

In the very exceptional cases of real viciousness, we still had recourse to the criminal procedure. But, if severity were required, the chancellor in the civil procedure had ample power to mete out the necessary control by convicting the delinquent of contempt for, or violation of, his orders.

The direct and informal method here described was extended to practically every kind of litigation that concerned the child or the family and all along the line it brought results far superior to those of the old order.

Of course, there were those who saw in it the danger of abuses, almost entirely imaginary, but we had no difficulty in pointing out that even if these abuses should ever become real the acknowledged abuses of the old order were infinitely worse.

Unfortunately these acknowledged abuses still survived in a limited way, for the new procedure was alternative and not exclusive and was frequently ignored by lawyers and judges who preferred the old system with its call for fees—fees of lawyers and court clerks, and at times, in some cases, fees out of which the salaries of the judges themselves were paid. And of course these fees in practically all cases came from the pockets of unfortunate people who needed to be helped and not penalized by the state in the first step of their struggle for justice and understanding.

I recall, for instance, the bitter and extended litigation over the custody of a child promoted by a former prosecuting officer of our county who insisted upon the formalities of the old procedure. Days were wasted in senseless bickerings and court oratory before a settlement was reached. Then this worthy attorney, who had served for years on the grievance committee of the bar association, sent his client a bill for \$900. Yet the whole matter could have been satisfactorily disposed of, under the new simplified procedure, in an hour's conference around my table without one cent of attorneys' fees and no court costs.<sup>1</sup>

And the family, in this instance, did not get much "protection" from the institution of legalism!

To me these senseless exploitations by the bench and bar are getting to be an old story. Since I left the juvenile court I have listened, on the street and in my home, to the tales of scores, if not hundreds, of parents illustrating the stupidity of the whole business.

Only the other day a father hailed me from his automobile and rolled up to the side of the kerb to pour out his troubles on me. He didn't hesitate to talk to me in public sight. He would not have hesitated to come to see me in my chambers, had I still been judge of the court.

"Say, Judge," he complained, "I haven't been able to get within gun-shot of that guy down there in that damned court. He's the judge but he doesn't seem to know nothin'. He won't see nobody."

Now he was speaking of my successor, and it was apparent that he was not able to understand why a habit, tradition and atmosphere that I had established in my work there had not "held on" after I left. As he talked I saw the "old order" returning, the old writs resurrected, the old procedure revived. This is what had happened—but let him tell it with all his layman's scorn of the "justice" of lawyers and courts:

"You see, Judge, it's this way. Sally has had a lot of sickness and has been a lot of expense and we've just been having a hell of a time getting along. Then a gossipy old woman begins encouraging her in her suspicions about me

<sup>1</sup> Before such changes came hundreds of thousands of dollars were unnecessarily spent annually in our city and state for lawyers, courts and judges.

and 'another woman' that don't even exist and gets her to believe that I'm going to skip out to California and leave her and the kids.

"And what does she get Sally to do but go down to——" here he mentioned the name of a well-known lawyer and politician who was an especial stickler for all the rules and regulations and technicalities of legal ethics—"and he ups and files a case in the district court before Judge So and So, an old K.K.K. political friend of his, and he says in that paper that I'm going to leave Sally and the kids, just as though I was a damned crook like that—you know I ain't that, Judge.

"Next thing I know some sheriff or cop comes after me with a writ and a great long paper that is a copy of all that rigmarole they have been saying about me.

"Of course, I know the whole thing is a pack of lies but what good does that do? I go up to see this judge but, good God, I can't get within gun-shot of him. There are two or three bailiffs or hangers-on around the court and one of these guys says:

"Son, what you want is a lawyer."

"And he tells me who to get. And I takes his tip as being a good lead and I goes to this guy and he tells me I'm in serious danger of going to jail, because that is what all this rigmarole means.

"He has got to get up an answer, pay a docket fee, and we got to have a trial and all that sort of thing. And then he takes my breath away by saying his fee for me to pay will be \$250.

"Of course, I can't pay him \$250 but I pays him \$50 on account, knowing I got to pay the balance. But I can't go to jail.

"And we have a hearing before the judge and my wife spills her suspicions that don't amount to nothin' and she does a lot of complaining against me—all because she is sick and don't know what she is saying.

"But that guy on the high bench he believed every word of it. I cannot talk to him nor tell him nothin'. When I tries to say something they stop me—that other guy objects all the time to anything I want to say.

"So, not knowing anything about the case, the first thing the judge does is to order me to pay \$500 attorney's fees



to my wife's lawyer. I don't even get no chance to tell the Judge that I already got to pay \$250 to my own lawyer and now if I have to pay \$500 to that other guy how the hell am I going to support my kids?

"But my wife's lawyer says he'll take \$100 on account and I'm ordered to pay \$75 a month for the support of the kids.

"I does the best I can but one day I gets an order to appear before the court to show cause why I'm not in contempt for not paying my wife's lawyer more money. I cannot pay him and this judge commits me to jail for ten days until I do pay him. Then I loses my job.

"Now ain't that the hell of a way to help a man support his family?"

And this hard-pressed father confides in me that he has thought of most everything from murder to suicide, especially the latter. He has lost his job, he is worried to death and he can't talk to the judge.

"If I do," he says, "I'll get punished for that."

"But," I asked, "why didn't your wife go to the Juvenile and Family Court in the first place?" It was true that I had been put out of it and most of my work had been destroyed, but the statutes were still there and the procedure available that should not call for either lawyers' or court fees. Under this procedure all the money this father had paid to the lawyers and the court would have gone to his wife and children.

"Oh," he replied, "she, too, went up to that court that was yours once but it wasn't the same kind of thing. They told her she couldn't see the judge—she would have to get a lawyer."

And yet in the face of a long record of such damning conduct, leaders of the bench and bar in Colorado have continuously sought to gain for themselves the adulation of the pious and the good by accusing me of "destroying the home."

It would be maddening—if it were not so preposterous. A sense of irony—and of humour—alone saves me.

CHAPTER XII

“CRIMINAL” JUSTICE

“To have the necessary effect the statutes should be criminal ones.”

Thus spoke my successor as reported in one of the daily newspapers as he mounted the bench in the court where for twenty-eight years I had been developing a constructive technique in dealing with troubled youth and the problems of the family.

I entertain no personal animosity. A young man was climbing to political power and the words, after all, were not his own. They were the feeble—and rather pathetic—echo of the voice of reaction, then temporarily triumphant in Colorado. Perhaps he had been coached in some such sources as to what he should say.

Reaction, as I shall explain later in my story, had at last, after the long, long battle, succeeded in turning out “Lindsey” from the Denver Juvenile and Family Relations Court. Its inexperienced, ineffective and in any angle of this work theretofore unheard-of agent was striving to “make good.” Blinded and confused by his sudden accession to power, he was nevertheless faithfully trying to say the things and do the things that would please the dominant forces among my bitterest enemies that had put him where he was.

“Lindsey” was out—“Lindseyism” must go with him! When the pendulum swings back, as history amply shows, many absurd things happen. And so this new judge must not be too severely criticized for mumbling: “To have the necessary effect the statutes should be criminal ones.”

And yet the statement is an appalling indictment. As I have shown in preceding chapters and will continue to show in succeeding ones, the unofficial procedures we were developing in our court were vastly superior to the old official procedures both in the rehabilitation of the individual offender and in the protection of society. And any one with the smallest capacity for observation should have known that perhaps the most fatal weakness of the old procedure lay in the fact that its purpose was purely punitive.

If there was one lesson more important than others to be learned from our juvenile court experience it was that "to have the necessary effect" the statutes should NOT be, primarily, "criminal ones."

Let us here confine our attention to a detailed examination of some of the vices of these "criminal statutes" and their "criminal" procedures.

As we worked informally with both youth and adult in our court one of the discoveries that almost continuously amazed us was how little judges and court officers were able to learn of the real facts of any case under the technical rules of criminal procedure. The limitations as to the admissibility of evidence, we found, were just as likely to destroy the truth as to get it. In our work we "let them talk" unhampered and unvexed by lawyers' "objections" and in the atmosphere of freedom and sympathy the truth generally emerged. We got the "whole picture," not a partial one. Excepting in certain rare types of criminal cases, unless it was requested, and it seldom if ever was, I doubt if in over twenty years I ever so much as swore a witness in any case.

Then there was the stigma of the formal "convictions" which stood as a permanent and unnecessary handicap in the lives of many youths, preventing them, for instance, from holding responsible positions in the business world or from rendering valuable public service. I saw no reason why these youths, whose offences were largely the result of ignorance and misunderstanding or a too abundant energy, should thus be penalized, especially when I looked out upon the world and saw men at the head of public utility corporations and other big business enterprises and on the bench and in other high offices who had committed far worse crimes for which not even a complaint had been lodged against them.

The state, I was aware, was trying to avoid or lessen the bad effects of these "criminal" statutes and procedures through extensions of the probation system, but probation could not be granted until after the stigma of "conviction" had been inflicted. To me, it was as if a man coming to a doctor's office for treatment for a blow on the head had to be given another blow before the desired relief could be administered. In our unofficial cases there was not even so much as the filing of a criminal complaint, much less the stigma of the, unnecessary conviction.

Again I am reminded of the devastating effect of these criminal statutes when applied to what are known as the sex cases. The most important among these cases involved the so-called statutory offences, or improper approaches of men toward girls and women. Also there were the cases dealing with the illegitimacy of children and with certain sex liberties. In those matters the old procedure not only failed to afford protection but it was ruinous in its effect upon those in whose behalf it was invoked.

Our criminal statutes, for example, provided very severe penalties for “statutory rape,” a sex relationship between a female under the age of eighteen years and a male over the age of fourteen with or without the consent of the female and regardless of her previous chastity or reputation. This offence, it will be seen, was much broader in its definition than the common law crime of rape, which consisted of sex relations by an adolescent or adult male with a female under the age of twelve years or sex relations accomplished through force or violence.

Now, perhaps because of my particular background of tradition, I have always held the purity and virtue of womanhood in high regard and scarcely anything else has so thoroughly aroused my rage as assaults of men upon immature girls or their attempts to impose themselves upon mature women through force or violence. In this type of cases I have given my share of severe sentences.

But, while I was then, and still am, strong for the most effective laws for the protection of women I soon began to realise that protection was about the last thing afforded by these severe “criminal” statutes. Indeed, their very severity was in large measure responsible for their failure to protect.

For example, in a survey made by us covering the years 1903 to 1913 we found that under the criminal court procedure—under the strictly “criminal statutes,” of which my successor had publicly expressed himself as being so fond—520 complaints against men were made to the district attorney’s office by women and girls.

Of these only 176 came to hearing or trial and only 22 convicted. And of those convicted, less than half, due to appeals and reversals, were actually punished.

In other words, in the criminal courts under these criminal statutes, the men “got off easy.”

Now how about the 520 girls and women involved? Well, it is a certainty that the great majority of them were punished, hurt, hampered in their lives from the publicity and the resulting abuse and suspicions to which they were unavoidably subjected in these "criminal procedures." Most of them did not deserve such a fate, but they suffered whether they deserved it or not. And, of course, little or no social stigma or disgrace was felt by the majority of these males.

I recall the case of the sixteen-year-old Denver girl who had sex affairs with five young men, all from good families. As is frequently the case with the oversexed, this girl appeared to be older than her age. She was very intelligent, having just finished the high school with a good record. She would be accounted especially good-looking, if not actually beautiful.

Like other girls I have known who have had a wide sex experience with boys and men, she would, I am sure, have married, settled down, and become a loyal wife and a devoted mother of children—if she could have been spared the publicity of court proceedings.

But her father, discovering the state of affairs, was determined upon a prosecution of the young men involved. I questioned his wisdom. Convictions, I knew, were sometimes easily obtained in cases in which the man was much older than the girl and the advantage taken was fairly well indicated or where violent assault was involved. But in 50-50 cases like this, starting with a voluntary act by the girl, there were generally acquittals or divided juries; and if the latter, after one or two trials the patience of the prosecuting officer would become exhausted and he would ask for a dismissal.

Now the girl in this case had been quite frank with me in discussing her experiences. I recall that she protested bitterly against the prosecution, confessing that she was as much at fault as the boys.

(It is doubtful if she was as frank with her irate parents. Under the influence of fear, girls, in these cases, seldom were.)

Well, there was much newspaper notoriety—the case from the start was good "page one stuff." So that this otherwise promising girl was absolutely ruined in the community in which she lived. Mark you, she was not ruined

by the sex act itself—she was ruined by the fact that the act, brought to the attention of the authorities, was dealt with under one of these brutal and inefficient “criminal statutes.” But to go on with the story—

The defendants in question, being from families of considerable wealth, employed the ablest and most expensive lawyers obtainable. The trials that followed were lurid and rather disgusting spectacles. There was testimony from a number of high school and other boys who with their friends frequented the court room, dividing into contending groups according to their attitudes for or against the defendants.

When four of the boys were acquitted the court room almost rocked with a demonstration of applause from their admiring comrades who knew they were guilty of all that had been charged. One of the defendants was carried from the court house on the shoulders of his friends with shouts of victory.

The fifth boy, the most serious offender, having been tried alone, was convicted in the lower court, only to have the judgment reversed in the supreme court. Before its reversal he had been engaged to, and afterward married, the charming and beautiful daughter of one of Denver’s best families.

As to the four, they, too, were all married in a few years into the city’s best families and they are to-day the husbands of good wives and most of them the fathers of fine children. The entire episode as to them is gone and forgotten.

But no one thinks to inquire what became of the girl. She is gone from Denver. It is doubtful if she could ever return there, although I believe, as I indicated before, that she, too, might have become a good wife and mother if it had not been for the blight of publicity in that court of the “criminal procedures.”

Oh, yes, “to have the necessary effect the statutes should be criminal ones”!

I had seen these “criminal statutes” operating too long in the “sex cases” not to recognize their many evil effects. Men lied to escape conviction—“legitimate perjury” it was sometimes facetiously called. And when they went free, of course, the women or the girls accusing them were “liars” or “blackmailers,” whether they had told the truth or not. The aftermath of these charges was an inevitable harvest of bitterness and hatred that spread their poison

through the community and frequently resulted in crimes of violence.

Then there were the actions brought under these criminal statutes for the satisfaction of "nerves," jealousies and the desire for revenge that often took on an aspect more sinister and "criminal" than the sex act itself could ever have been.

Many of our eminent old-time jurists still like to talk about "even-handed justice"—well, as a rule, there wasn't any such thing when the "criminal statutes" and the "criminal procedures" took hold of these sex cases. There was such a wide difference in the attitudes of district attorneys and the penalties imposed by judges that most of these procedures were from the standpoint of justice an utter farce.

I had an excellent opportunity to study the system at close range years ago while presiding in the criminal division of our court. It has such jurisdiction against any adult where the victim of the offence was a person under the age of twenty-one years. One particular panel of jurors, I remember, returned verdicts of acquittal in five out of six "statutory rape" cases that had come before it. And the sixth case, in which there was a conviction, was unquestionably the mildest of them all.

Indignant over the injustice, I determined to ascertain the reason for it. After the panel had been excused I casually came into contact with one of the jurors. In opening his conversation with me, he expressed his own disgust for what had happened.

"You see, Judge," he said, "the penalties in this sort of cases are pretty tough. That's the reason, I think, why the defendants in the two cases that looked the worst escaped conviction. Most of the jurors were convinced the fellows were guilty but there were all sorts of arguments about the possibility of them being sent up for twenty years. The jurors knew, too, in one of these cases that the defendant had a good old mother and some younger kids depending upon him for support.

" 'I don't think it's square, fellows,' one of the jurors would speak up, 'and I'll be damned if I'm going to vote for conviction. He had to hire a lawyer—he's been catching hell enough as it is.'

" 'Yes, that ought to be sufficient punishment,' said another.

“ ‘And, say,’ a third would chime in, ‘how many fellows are there here who didn’t get into some girl scrape when he was a youngster?’

“And then some one would ask him if he did and if he was ready to ‘fess up’ and there would be a laugh all the way round. They’d get to joking about it and then some juror, yawning as though he was awful tired would say: ‘Gosh but I want to get home!’

“And another would turn the tide by saying: ‘Hell, yes. Let’s settle this thing. My wife and I got an engagement out to-night and I’ll be darned if I want to telephone her to pass it up—she’d be too disappointed!’

“ ‘Let’s take a vote, Mr. Foreman, let’s take a vote,’ some juror would suggest.

“Well, what do you think, Judge? There were eleven for acquittal in that case and one for conviction—and that was me. Now, how could I hold out against eleven fellows? I didn’t. I just changed my vote so you could take our verdict before court adjourned and you had gone home for the day.”

“But what about the sixth case?” I asked. “Surely that fellow deserved acquittal if any of the rest did.”

“Oh, yes,” he recalled, “that was several days afterward. I was on the jury, too. Well, you remember that committee of funny old ladies that came to court later in the week? They sat there and stared at us as much as to say: ‘We’re watching you guys.’

“Now, Charley So-and-So, he happened to know one of ’em. And Charley, you know, is going to run for the legislature. He told us this woman was active politically in his district and he needed her support.

“ ‘She’s awful strait-laced,’ he told us, ‘and the darnedest old hell-cat you ever heard of when she gets after you, and I don’t want her on my trail.’

“That was the reason, he said, he was voting for conviction.

“ ‘Well,’ I said, ‘I don’t think this guy ought to be convicted.’

“But one of the other jurors spoke up: ‘Do you fellows know that we have already acquitted in five of those cases and this is our last?’

“Then Jim So-and-So says: ‘I tell you, fellows, I don’t like the looks of those women. It’s not only Charley who’s



going to get roasted when he runs for the legislature! I guess we ought to convict somebody to appease those dames and this is our last chance.'

"Of course, the boys thought he might be guilty but—just like you said—it was nearly three years ago the thing happened and that girl that testified against him was mad because he married another woman.

"'Still,' one of the boys said, on this point, 'that's no reason why he shouldn't be convicted, if he did it.'

"Before I knew it somebody called for a vote and this time it was eleven to one for conviction and I was the only fellow standing out for acquittal.

"Well, I never was one of those hard-headed jurors that gets obstinate and just bucks up and keeps the other boys out all night. I knew the cussing I was in for if I did. So I gave in, hoping the poor devil might get a light sentence or a new trial."

He was obviously dissatisfied.

"No," he concluded, "I don't want to serve on any more of those cases, Judge. Seems to me there's something wrong with that law, anyhow."

\* And there was and is. And, as we proved in applying the chancery court procedures of contributing to delinquency in the Juvenile and Family Relations Court in Denver, it was unnecessarily wrong. Such senseless juggling of justice as occurred in these six criminal court cases would have been absolutely impossible in our informal work.

There was, first of all, no fear of such a severe penalty for the offender as twenty years in the penitentiary to deter us from trying to arrive at a just solution. Under our procedure we were free from the necessity of considering penalties as such at all.

Of course, it should be admitted that the cases brought before us were not those of violent and vicious assault or of relationships of the older men with very young girls. But neither were the cases cited above. And, as a matter of fact, only about ten per cent of the sex cases were of that character, the remaining ninety per cent being more or less "50-50" as to responsibility or "guilt."

Now let us look at some of the specific advantages of a procedure in which the statutes applied are NOT "criminal ones."

In the first place, the men brought to our court in these cases knew they were not facing the possibility of long terms of imprisonment. The court had the power only to punish for contempt in these civil procedures of contributing to delinquency under which most such types of so-called “rape” cases were heard if they were not settled unofficially—as they often were—to the satisfaction of all concerned. The limit of the penalty was a fine of \$1,000 and imprisonment not to exceed a year in jail. The minds of these offenders were thus relatively free from fear and they were much more likely to tell the truth than they would have been in a criminal court. In fact, as I recall these cases to-day I cannot think of one in which a man consciously committed perjury or where any one involved was really dissatisfied with what was done.

The disinclination to lie or conceal the truth was further strengthened by the fact that the protection the girl enjoyed by law from any publicity disclosing her name or identity was, through the sympathetic co-operation of the press, often shared by the man.

We got the facts and when they were before us the line of constructive action was generally clear. Sometimes it called for discipline and direction of both parties in their forbidden lives. Often it called for the payment of damages for the protection of the girl. Thousands of dollars for this purpose were collected and paid out under this civil procedure—none of which would have been possible under the criminal procedure without “compounding a felony” or otherwise seriously embarrassing the district attorney’s office.

I remember one instance where a girl was paid damages to the extent of \$5,000 without exception or appeal by the attorney for the man involved, all under a procedure, for the first time, provided by law in Colorado.

The rule against publicity, as I have said, helped us get at the real facts. Equally important, while we were getting the facts, it prevented the absolute ruin to the girl certain to follow if her pregnancy, maternity, possible exposure to disease or other details of her unfortunate experience were played up in the columns of the newspapers.

While the press complied with the law and refrained from harmful disclosure of the identity of the parties in these

cases it should be made clear that it was not kept in ignorance of what was going on. Newspaper representatives frequently attended our informal hearings—indeed they were encouraged to do so—and their stories of our new and oft-times dramatic technique helped to spread a knowledge of it through the community without implicating the individuals involved.

And as the public understood it gave its approval. Commendations and appreciations began to pour in upon us from parents, from the girls and women who had been helped and even from the offending males themselves who now, instead of being merely “punished” for their mistakes, were being quietly drafted into an effective work of rehabilitation.

There were, of course, antagonistic elements in the community, such as the Women’s Protective League, that continued to prate about the “protection” of girls through “criminal statutes” and to demand the raising of the “age of consent” and the infliction of severer penalties. And these, though there was never on record a single case of their having done anything to help any girl, directed campaigns of abuse and vilification against us. But the community at large was not with them.

Our needs for new legislation were being victoriously met. Our work was expanding in unbelievable directions. We found ourselves creating a new institution of human relations that was absolutely abolishing the necessity for a considerable share of the work formerly done in the criminal court. And there was no other reason in the world for this revolution that was being wrought than that these stupid “criminal statutes” to which my successor proposed a return never had had and never could have the socially “necessary and desirable effect”!

#### CHAPTER XIII

### QUIXOTE IN THE COURT

ONCE more I return to my successor and his quixotic thrusts at the strange new devices of the Juvenile and Family Relations Court.

Mounting the bench, he extols the virtues of the “criminal statutes,” as we have seen. The bench itself he finds too low

to meet the requirements of judicial dignity—according to the press, he will “raise it eighteen inches”! And in an expansive moment he confides: “I will say . . . that my idea of the court is to make it as nearly like other courts of record in the state as it is possible under the law.” The day following he explains: “I expect to conduct this court with complete records and with attorneys representing those who come to its bar.”

My “rebellion” was to be punished. The informal procedures were to be abolished, the formal, “Official” procedures restored. No doubt the listening bar applauded, with visions of a revived stream of fees. It was all a part of the plan to get rid of “Lindsey.”

Yet, too much in the way of spectacular windmill tilting must not be taken for granted, for our modern Don Quixote was a cautious knight. He proposed to get his results through no rash frontal attack on the many items of legislation by means of which we had set our institution of human relations functioning.

Though he complained that these laws “have criminal aspects but come under the civil procedure” and were therefore “defective,” he nevertheless announced that “they were not so defective as to necessitate repeal and re-enactment.” No, he thought he could fix them up by the simple process of “polishing”!

There was, of course, nothing new about this antagonism. It was part and parcel of the common ignorance and misunderstanding we had been forced to combat, particularly in the legal profession, in developing and expanding our court work; although I must admit I had succeeded in getting very few of the some fifty items of laws I had written just exactly as I wanted them. But the work they aimed to permit could be done where there was the will and the disposition to do it. I remember well the statement of a leading member of the bar at a meeting of the bar association that “about half of these (Lindsey) laws ought to be repealed because they seemed to be so much like others intended to cover the same subject.”

This eminent gentleman is now a judge of one of our highest courts. Yet he had not the slightest conception of the fact that the similarity of which he complained was due to our desire to safeguard a procedure established for the

first time by any state in the world, and so broad and comprehensive in the interest of the family that it covered the widest conceivable variety of phases of human conduct. And it covered it under certain criminal court procedure and for much more practical purposes in most cases also under a chancery civil court procedure. The criminal court procedures were for the exceptional cases. It was good at times to have it in reserve if needed.

Time after time as I met these shallow criticisms I was reminded of the observations of real authorities in these matters, that among people most ignorant of child welfare legislation some of the judges of our courts, especially of our supreme courts, are the most notable examples.

As my successor stood for the first time in the juvenile court, no doubt he felt a great and sincere yearning to revive the security of the old order. The court's achievements left him, as it would have left any other orthodox judge, unstirred. The saving of millions of dollars to litigants, the saving of human values through the elimination of discords in family relationships and the resulting immorality and crime seemed to mean little or nothing to him. And so there was no appeal for him in the elastic administrative methods by means of which these savings had been effected. These public declarations reported in the papers and never denied, certainly justified this conclusion.

Moreover, since these elastic administrative methods often parted company blithely with rule and rote, they were themselves under suspicion. They had come into existence, as my successor knew, to an accompaniment of howls of derision from the reactionary forces. We had dared to use them even before they had full legal sanction—which did not come until we had demonstrated their success in action—and that evolutionary process is always anathema to the defenders of the old order. Nothing so terrifies them as any kind of a "Boston tea party"!

Beyond these factors there was, of course, the natural timidity of a human being facing the necessity of mastering a new technique that appears to him to be intricate and complicated—and of mastering it before the public gaze. Men with the make-up of most judges, to whom dignity is an essential, do not like to be seen hurtling through the air from a bucking bronco!

And so the love of my successor thus publicly proclaimed for the easy safety of rule and rote was understandable.

He was headed backwards towards the old formal procedures as inevitably as water runs down hill.

In preceding chapters we have already given some typical examples of these procedures in action. We must now complete the picture.

One of their most obnoxious products was a brand of "political justice" quite common in Colorado—as indeed it has been throughout the remainder of the United States.

"Political" judges grand-standing on the bench to win the applause and support of certain influential elements of the community at the next election, heedless of the unnecessary suffering their publicity antics caused helpless litigants.

I recall, in particular, one such jurist who was a "pillar of the church" and who on "divorce day" would tip off his clerk or bailiff to let the newspaper men know there would be "something doing" in his court. The technique was not unlike that of the proprietor of a certain gambling house and saloon in the old mining days of Denver. Knowing that two rival outlaws were due to be at his place at a certain hour, he would pass the word to the press so that the reporters could be on hand to witness the "big gun fight."

So the press would be properly represented in court, even to its photographers, by the time this judge got under way.

An attractive young flapper wife was usually selected for one of these spectacles. Short skirts were not overlooked, for His Honour was well aware that a "sexy" picture was required for the best press purposes.

As the drab story of human misery unrolled, the judge would sit with gleaming eyes, ready to pounce upon his victim at the proper psychological moment.

"It was just terrible the way he talked to me," the flapper wife would be testifying, "just terrible. I thought I'd die with shame under it. No, I can't stand it to live that way—I can't——"

At this point the eminent gentleman on the bench, the high and mighty conserver of public morals, would bend

over the witness and begin his grandiloquent sermon upon the need of fortitude in married life. Then with a few tricky questions he would trap her into admitting what he already knew was a fact, that the reason the husband was not there to contest the action was because—"well, he wanted the divorce as much as I did."

"So you agreed about this divorce?"

"Oh, yes, we both agreed that we wanted it," the little flapper would innocently reply.

And the "eminent jurist" would glare at her and continue his bullying harangue from the throne—it was all as cowardly as taking candy from a baby, for the flapper wife, without a chance for a come-back, was as helpless as the gnat that the judge was brushing from his nose. Of course, he didn't countenance any such outrage on the home and the family. This divorce business was getting too easy—it was high time something was done about it! This would especially please his churchly constituents.

And the reporters would be scribbling and the photographers' hidden little cameras clicking. It would be a great day in court!

And while these are not His Honour's exact words, they do correctly portray his attitude:

"Now I have caught you at it—damn you, I have caught you at it. You both agreed in the lawyer's office that you are utterly miserable and hopelessly incompatible. The shame of it! You both agreed that you wanted this divorce—well, that's collusion, young woman, I'd have you understand. It's the sort of thing that is making for the breaking up of the home, the very foundation of the republic, the home that it is the duty of this court to maintain in all its pristine glory and perfect purity lest civilization perish from the earth!

"But, ha, ha! young woman, I caught you at it—damn you. And when I catch a couple like you agreeing on a divorce, I'll sustain the majesty of the law and deny you what you want. It's not what you want that counts, young woman, it's what I want—it's what society must have if it is to endure.

"So you go back to your husband, make up with him, live with him until death do you part, as it was commanded in the first place!

"You say that you hate each other—how dare you? You say that you made a fool mistake—what right had you to be so silly? True, people make mistakes in every other department of life but they have no right to make them when it comes to the sacred home, the very foundation of civilization itself.

"No, I don't care to hear any more. You admit you both wanted a divorce—and that, young lady, is the very reason you shouldn't have it. The action will be stricken from the docket—call the next case."

And, of course, this worthy judge who is to get and does get the endorsement of the bar association has not forgotten to point out his own purity of life and the remarkable number of years through which his own marriage has persisted—all of which is a suggested example as well as positive proof that similar conditions might have been enjoyed by the little flapper if she had only learned to avoid the deceptions of this modern age and had not been deluded by its silly calls for the freedom of women and their emancipation from the brutalities and superstitions of the past.

Nor has he failed to extol the virtues of "discipline," self-control (but never birth control), that was so much needed in her misspent life. The static state of matrimony—oh, yes, that was the sure cure for all the evils with which she had been afflicted!

Speaking of annulments, I am reminded of the impassioned plea for "respect for law" made by another of these "political" judges in dealing with a mistake not uncommon to youth.

Before him stood a boy, seventeen, and a girl, sixteen years old, who under the emotions of puppy love had hurriedly married. On either side were the tearful parents. The young couple had repented before they had had an opportunity to live together as man and wife and they were now before the court mutually desiring an annulment.

It was, as any one could see, a "horribly lawless situation," one that merited the severest condemnation of His Honour! Yet, if we can wrench our attention for one moment from the stern-faced autocrat on the bench and his wretched victims, it may be well to note that in the Juvenile and Family Relations Court over which I presided there would have been nothing "horribly lawless" about it at all. There would not even have been a lawyer within gunshot of the place!



The parents would not have been weeping nor the boy and the girl suffering under a conviction of unpardonable sin. And, needless to say, there would have been no stern-faced judge on the bench. It would all have been very untheatrical—as details of administrative business properly are. The necessary blanks would have been filled out by a clerk and signed for filing. And the judge would have granted the annulment to which this young couple was so justly entitled. The spirit of the law would have been observed and there would have been no further need for lawyers.

No further need for lawyers—aye, there's the rub. For the reactionary bar stands adamant on the proposition that separations by annulment or divorce must go hand in hand with the lawyers. And because of its dogged resistance to change, the institution of legalism pockets an annual income of about \$1,000,000 in the city of Denver alone and of perhaps over \$100,000,000 in the United States as a whole—an utterly senseless exploitation of the public, for the institution of human relations such as we were beginning to develop in our court could have done all of this work in Denver, with practically no help from lawyers, for not more than \$50,000 a year; and, because of the scientific approach, with the certainty of reconciliation in a heavy percentage—perhaps a majority—of the cases but with honest divorces in all the rest.<sup>1</sup>

But, to return to our stern-faced judge champing on the bench for the forthcoming paragraphs in the press:

He had looked the law up with great care, he announced. He had found decisions as far back as 1837 in a most respectable Eastern state that was noted for the piety of its lawyers even from revolutionary days.

And there it had been held that any girl over twelve years of age and any boy over fourteen could, with or without the consent of their beloved parents, get married. The fact that the boy and the girl of these tender years were incapable of any real conception of the contract into which they had

<sup>1</sup> A friend of mine, a highly respected member of the bar association, said frankly to me: "Don't you see, Lindsey, the trouble with your scheme is it eliminates most of our graft? Personally, I am for the changes you demand and the fine work you have been doing, but I have to make a living in this town and I can't afford to get in bad with the bar association and the courts. Many of the lawyers are with you, but they dare not show their hands."

entered was of little moment. There the law stood—its “letter” was clear. And until it had been most specifically and without the slightest question or shadow of a doubt shown to have been deliberately and with malice aforethought changed, it was still the law in our beloved state. What God hath joined together, by the Eternal, he would be the last man to put asunder!

No matter how the case called to Heaven for sympathetic understanding and relief on behalf of both parents and children, THEY were not to be considered. It was the precious Letter of the Law that came first in his court—it was as sacred as the Sacred Bull of old and must be respected.

The spirit of the law—what was that? He had never heard it mentioned in meetings of the lawyers’ “union” at the venerable University Club. The lawyers ought to know; for, after all, the law was made for them, not for the people. And so, knowing this man’s attitude, I was not surprised to hear what he said to the bewildered quartet in front of him: “Go to a lawyer’s office. There may be ground for a divorce—but as to that you’ll have to see a lawyer. The way out is through his office, not mine. . . .”

And through such talk I could almost hear his self-communion, à la O’Neill’s *Strange Interlude*: “This will be good stuff for the boys at the Law Club. It will guarantee my renomination and re-election as judge in the next campaign—and that, God knows, is the important thing in my life. I must do something to deserve it if it’s only to help the boys by boosting business.”

Such, then, was the character of the “political justice” which the old official procedures were constantly thrusting upon my attention. The more I observed their evil effects, the more determined I became to cut loose from them altogether in our institution of human relations, misnamed the Juvenile and Family Relations Court.

I have already explained how our informal administrative technique contributed, in many fields, to justice and happiness, instead of injustice, misunderstanding, bitterness and hatred, and how it operated to save the home instead of destroying it.

The lawyer, as I have shown, was already largely out of our court—he had no function to perform there. This had been “anarchy” to the bar, but now came the greatest

"anarchy" of all. I began to hear cases not only without lawyers but without pleadings and without any court records whatever!

The traditional court records, I had found, served no useful purpose whatever in most of our cases. They generally concerned only the private lives of girls, women, families and I strongly advocated the right of the judge to burn up those already in existence after a reasonable period—say, about two years following the service they had called for from the state—had elapsed.

Generally there was just as much reason for getting rid of these records as there was for getting rid of the troubles they recited.

So, in their place, in the cases arbitrated before me with the consent of the parties involved I made, when I thought advisable, my own private memoranda so disguised as to protect identities. Some of these were kept for the particular studies they afforded and some for the protection of the court and the parties in their relationship to doctors, social workers, witnesses and others.

And as a result of the elimination of official records our work steadily expanded and reached more and more deeply into the life of the community. Girls and boys in trouble came who could not have been induced to enter an old-time court of record. Sometimes their parents accompanied them, grateful for the court's assistance and willingly co-operating with us in our programme for the protection of the children.

The new freedom, we found, permitted a much wider range of inquiry, made possible the formulation of much finer plans of helpfulness, and aided the promotion of a larger justice. And at the same time, under it, we were able to eliminate much of the expense as well as most of the abuses and evils that were part of the conventional court system.

It had at least the private approval of some of the ablest of our district attorneys, whose deputies were frequently called in as consultants with the consent of the parties concerned, and the public championship of some of the outstanding and more fearless members of the bar itself.

In short, a revolution in court procedure was already making its indelible mark on the history of jurisprudence. Due to my removal from the court the revolution was not

allowed to run its full course, but my successor, with the solid support of the reactionary forces, was never able completely to turn back the wheel of progress. He was forced to respect some of the changes we had made. The record of more than a quarter of a century and the legislation upon which it was founded could not be completely destroyed. It could be, and was, largely nullified for the time but it still stood an accomplished fact dangerously challenging the re-establishment of the old "official procedures."

## CHAPTER XIV

## THE CUSTODY OF MARJORIE

As the reader has seen, we were building our hopes, not on a court functioning through judge and lawyers, but on an institution requiring the services of scientific specialists. Many of the rules and technicalities of the traditional court stood in our way—nothing so exasperates men of scientific training and outlook as the superstitious regard for the methods of the past entertained by the gentlemen of the law. We, therefore, began to scrap the rules and technicalities—clear out the accumulated rubbish of the ages.

We were not vandals about it either, destroying for the mere love of destruction. We recognized the reasons for some of these regulations of justice and where they fitted into our purposes we respected them. But we were determined that no voice of a dead age should interfere with our efficiency in working for the present.

There was, for instance, that peculiarly naïve assumption that judges in our modern times could be isolated from the world about them and render judgments in cases before them based solely on the evidence introduced in court. I knew the assumption was false. I knew that judges—yes, even of our State Supreme Court—in certain types of cases had taken orders from the dominant corporation powers that certainly never entered the bound volumes of testimony. Yet here was I, presiding in an institution of human relations (misnamed a "court") and trying to develop a new administrative technique in the solution of human problems, faced

with the absurd prohibition: "*You must not see people in chambers.*"

Of course, I saw them in chambers and permitted them to talk to me about anything they wanted to in connection with their troubles.<sup>1</sup>

As long as we were trying to help people and not hurt them what harm could there be in striving to get at the truth? And how could we get at the truth unless we approached the witnesses under conditions free from the artificiality of modern courts with all the fears instilled by their stupid penalties and publicity?

Shortly after I became judge of the court having jurisdiction over juvenile cases I remember I found a school attendance officer waiting in my court room for information from the clerk as to a certain juvenile case. As I passed him I invited him into my chambers. He was a bit taken aback. He said that he had had a number of cases under the juvenile law of April 12, 1899, before my predecessor and that he had once been roundly rebuked by the judge for stepping into his chambers to consult him on such a case and the law involved in it.

The judge, he said, reached up to a revolving book case by his desk, drew down a ponderous tome, and, pointing to a statute, explained the pains and penalties that would follow if a judge permitted any one having a case before him to talk with him about it.

This judge, I may add, was a good friend of mine and sympathetically backed me in my original work as Public Administrator and Guardian in his court, but he would not have thought of descending to a table in his chambers as I did and setting up the informality of consultations with the parties to this child's case or any other controversy, either singly or together. This, I regret to say, was also the attitude of some of the other judges of the earlier juvenile courts in America—an attitude that made impossible the accomplishment of such work as we were carrying on in Denver.

Well, I laughed at the discomfiture of the timid school attendance officer. I told him that I thought more of the

<sup>1</sup> I am not passing judgment on the rule against chamber "consultations" in connection with the work of a formal court. What I am saying is that its application to our institution of human relations would have been a mistake.

children and their rights than I did of such nonsensical prohibitions. I made it plain that any time he wished to consult me concerning his work he should feel free to do so. I assisted him in getting the information he wanted.

Incidentally, for his ease of mind, I suggested that there were perhaps many laws on the statute books which were more important than this regulation excluding him from the judge's chambers but which were nevertheless ignored by the judges without any justification whatever.

I am sure that this officer went away from our conference with a better attitude toward his work than he went from the judge who had rebuked him for seeking similar help.

I do not know any better example of the value and advantages of this judicially tabooed work in chambers than the case of Marjorie. She was a dear little child of ten, whose parents a number of years before had been granted a divorce in the formalities of a "Court of Record."

One day two eminent members of the bar entered my court as the representatives of the contending parents in a controversy over her custody, which had been given at the time of the divorce to the mother. The parents to all appearances, were persons of assured social standing. The father was a successful business man of moderate wealth, who, since his divorce, had married again. The mother was still unmarried but, being a comparatively young woman, had become involved in a second romance the character of which was now brought into question.

Gossip and evil reports regarding the relations of the mother with her suspected lover having reached the ears of the father, he had put detectives on her trail "to get something on her" that would justify his present demand for the complete custody of the child.

And so we had the written petition on file in accordance with the provisions of the statute charging the mother with "immoral conduct" and being a person "unfit" to have the custody of this child of tender years. The child, as it was alleged in the petition, had reached an age calling for a good example on the part of the mother but her mother, failing in this, had subjected her to an environment threatening her corruption—unless the court granted the prayer of the petitioner and transferred the keeping of the child from the mother to the father.

Eminent counsel on both sides were anxious to know something about the time to be taken in the trial of the case. One announced he had ten witnesses; the other, fifteen. Indeed, these witnesses almost crowded to capacity the spectators' benches in the outside court room.

It was agreed between the attorneys that they would require from five to ten days to try the case.

"Gentlemen," I interpolated, "will you kindly be seated informally around my table here in my chambers so that we may discuss the case?" (The beginning of the judges' heresies.) "Now, will you tell me briefly on each side what your complaints are?"

They told me but with more or less obvious disgust at the turn of events. No doubt they saw their fees of \$100 to \$250 a day suddenly vanishing.

"Gentlemen," I continued, "you know it is my practice here to avoid litigation wherever possible—even to avoid the filing of anything that has the semblance of it. I regret very much that your clients didn't come to me instead of to you in the first place. But, since they were unaware of the practice here, I shall not blame them."

And then I went on good-naturedly jesting about the needless expense of lawyers and the possibilities of a system that would eliminate at least two-thirds of them in cases of this kind, effecting a saving to the people of the country of several hundred millions of dollars a year.

Well, we were personally friendly and I may say in their behalf that they restrained their tempers admirably.

"If your case is like the great majority of cases here," I went on serenely, "I'm sure it won't take five days, or ten days—perhaps not fifty minutes—and to the satisfaction of all of us.

"Now, what I propose is that you gentlemen withdraw to the next room and let me talk to this ex-husband and this ex-wife and their small offspring, who seems to be the victim in this unfortunate affair. I shall want your consent, gentlemen, to interview first one parent, then the other and then the child—each alone and then finally all together, but without your presence and out of your hearing. It may be I'll have to continue the case to-morrow in order to complete these conferences.

"If in this way I can settle this controversy to the satis-

faction of your clients and the small victim, surely you won't object. If I fail, you may have all the forms and formalities to which the technicalities of the statutes entitle you. You may, indeed, have another judge whom I shall gladly call in to hear the case or you may call a jury. In other words, you may have the law to the full if I cannot satisfy you all. . . ."

They did not object—how could they with their respective clients sitting by? For it was clear to these clients that my proposal—if, miraculously as it seemed to them, it should succeed—would avoid unpleasant publicity for all concerned. (Of course, this publicity would help the lawyers but really they were not seeking that sort of thing!) It was also clear to these clients that my proposal would save them a considerable sum of money, which would surely be in the interest of justice—and wasn't justice what we all wanted in this case? (Surely the lawyers did—all, all honourable men!)

They did not object—but they did not like it. For with all due respect to my profession and its many honoured and honourable members who *privately* tell me they are in hearty accord with the procedure here described, it is a bitter pill for most of them to swallow. Search history and find me a class or group that willingly restricts its functions and powers and its accompanying "profits" or "emoluments." There was nothing more certain than that this new procedure, important milestone though it was on the road to the new justice, meant "The Dangerous Life" for me.

Well, the lawyers withdrew from my chambers, leaving me alone with their clients, and the chief obstacle to a speedy and just settlement of the case was eliminated.

Mark you, I am not on the bench in the old courtroom so seldom used now—the bench that my successor announced he would raise eighteen inches in the interest of judicial dignity. I am in a private room, free from the public gaze, and with me is a discordant couple, glaring their hatreds and suspicions at each other and doubtless thinking more of "getting even" than of the real welfare of their child.

We talk together as human beings. Of course, this is not "according to the law" but the "law" in such matters is a very stupid thing. Instead of "the law," we try the application of human understanding, of charity and sympathy



for the troubles of both parents and, above all, for the troubles of that innocent little child standing there by the window, bewildered and afraid, with tears in her eyes. Of course, I ask the little girl to step into the next room to the kindly lady who will tell her a story.

Am I judge now? I AM NOT, HEAVEN DEFEND ME AGAINST THE HERESY! I may be a doctor or some new kind of specialist that will some day receive an appropriate name—a specialist in the human heart and human behaviour. But not a judge. For me, no more of that raised bench and those witnesses with their half truths that are worse than lies and those lawyers with their glib, sing-song objections, “Irrelevant, incompetent, immaterial,” and all the balance of the nonsense that will use up ten days of precious time, not to mention the \$100 to \$250 a day of the harassed clients’ money. No, I am not a judge now.

And so I pass up the criminations and recriminations of these people and their witnesses, the suspicions and scandals that in the ordinary courtroom make for good “Press stuff” and feed the sadistic savagery of the rabble. I am now alone with the former husband.

“You see, Mr. Jones,” I say to him, “I have every sympathy with your desire to protect the morals of your lovely child against the influence of her mother—if the mother is really guilty of the indiscretions you suspect. It has been my experience that people very frequently are driven to action in these cases not to protect the child but to satisfy their personal grudges and spites. Of course”—as I hasten to assure him—“I don’t infer that you are acting from any such unworthy motive. I am assuming, as indeed at this time I believe, that your motive is high and fine. I think you are to be congratulated for showing this attitude of concern for your child rather than the attitude of indifference that I sometimes find in fathers who have been involved in domestic trouble.”

Then, still working to undermine any hidden spite motive in his mind, I tell him the truth about what may happen if his case goes to trial either before a judge or jury.

“It doesn’t follow,” I explain, “that your child will be taken from the custody of your former wife unless you are able to prove a violation of morality so flagrant that there appears to be no reasonable chance that the probation

officers of this court could correct it. And that is sometimes difficult to prove.

"Now, my dear man, I want you to be frank with me and tell me exactly what is in your mind. I promise to respect your confidence in every way—as I shall respect that of your wife—and to promote no bitterness, hatred or antagonism between the two of you by repeating to either what the other has said.

"This man whom you suspect, judging from the petition here and the statements of your counsel—do you really think he is having an affair with your wife under conditions that will imperil the morals of your child?

"You are married again and perhaps wisely and I hope, this time, to your happiness. But your wife, remember, is still young and you must not begrudge her a love life provided it is under conditions that should apply to the mother of your child.

"My experience is, Mr. Jones, that you may suspect much and prove little. Of course, it would be easy to produce testimony that would make a nice issue for the oratorical abilities of your own and your wife's lawyers and command the delighted attention of jury, press and public, but do you want to become the target of laughter and ridicule in that way?"

I smile and I think I see him smiling back.

"By the way," I suggest casually, "some time you must come and have lunch with me. I'm sure you won't object to me having lunch with your former wife. I want you both to be friendly and to come and talk to me whenever you feel like it. Yes, the law and the lawyers generally frown upon that sort of thing but I find them very stupid—in fact, it would surprise you to know how stupid most of their nonsense really is."

And then I tell him something of my plans to change it all. I soon find him in sympathy with me and again we come back to the point—when I let him do the talking.

"Well, to tell you the truth, Judge," he says, "when I first heard these stories of the questionable conduct of my former wife, I was considerably upset. I couldn't see anything in it but a bad influence upon Marjorie.

"So I employed a detective agency. The reports I received were largely based on gossip of the neighbours but they

were disturbing. It seemed to me there must be some truth in them. I thought I had enough to confirm my suspicions."

I listen deferentially as he continues in this vein. Then we try to decide how we may best co-operate to save Marjorie from any pernicious influences.

"I'm going to have a confidential talk with your former wife," I tell him, "and if I meet with my usual success I'll know positively the nature of her relations with her alleged lover. Of course, I won't be able to tell you what they are—I don't think you'd ask me to—but I'll know more than all of your witnesses would be able to tell either court or jury, under the old nonsensical rules and regulations.

"Now I want you to trust me. I want you to know that my interest in Marjorie is just as keen as the interest of either parent and if I find any evil or contaminating influences I shall most certainly not permit Marjorie to be subject to them.

"Further, I assure you that if the time ever comes when you have any doubt on this question you may have your lawyers, witnesses, detectives and all, and even another judge or jury to try the case.

"You may, of course, confide with your lawyers anything that has occurred between us. But otherwise may I ask you to keep it to yourself?"

It is evident that I have his confidence and respect and that he is really greatly interested in the new turn of affairs. I ask him if he will step into the next room while I have a little heart-to-heart talk with his former wife.

"You will, of course, wait out there until I call for you again," I said. "My custom generally is first one at a time and then both together. Oh, yes, your lawyers—just ask them to wait, please. I probably won't need to see them until we're ready to settle this case to your satisfaction."

He departs and the former Mrs. Jones trips in and seats herself opposite me. As in the previous conference with her husband, we are trying to help each other and we are going to co-operate to see that Marjorie is not "corrupted." Of course, there is nothing sanctimonious about the discussion—it is kindly, practical and touched with humour. (If the courts only dared to recognize the saving grace of humour—again may Heaven forgive my heresy!)

Naturally, the first Mrs. Jones is sure the second Mrs. Jones has had something to do with this trouble. Yes, and that gossipy old hell-cat sitting outside there with a face like——

Yes, I listen. Oh, heresy of heresies, will the judge be corrupted and the blindfolded lady on top of the court house with her "busted" scales and badly nicked sword come tumbling down on us?

"But they are quite human, Mrs. Jones," I observe. "Why don't you just laugh at them? It is something they must have in their boresome lives. Now, my dear child, let's forget gossip and hatred for the time and get down to the real substance of this matter.

"You are still young and it's only natural you should seek other attachments"—I am feeling my way with all the human artistry at my command—"and if you are in love with this man, please be frank with me about it. If there is anything I can do to promote your romance—well, count on me as your friend. I don't blame you one bit for being human and natural.

"But I shall question your judgment if in your love you flout the conventions and bring down on your head the public censure that is now threatened. That would interfere with your doing your duty to your sweet and charming little daughter which, remember, is one of the most important, if not THE most important, of your life's obligations.

"Incidentally, I may add, your former husband has some rights that we must respect. He is contributing to your child's support. He is the father of your child and on behalf of the child if not yourself let us have as kindly a feeling toward him as we can. I know a man of his type may be wrought up by scandalmongers and busybodies—well, let's have charity for each other."

And then I turn the conversation as adroitly as I can to the "lover" in the case.

"Tell me, do you love this man?" I ask.

"I do, Judge," she replies earnestly. "I am devoted to him and we really expect to get married but there are financial and other reasons which we both agree prevent it at this time."

I have her confidence and she discloses what is in her heart.

"Of course," I tell her, "you have a right to associate with your lover—as your former husband has a right to associate with his present wife. But, rightly or wrongly, society demands certain conventions and it is especially important that you comply with them so that no scandal reach you and thus injure Marjorie. You agree to that, of course, Mrs. Jones?"

She agrees.

"I find," I continue, "that you and your former husband are not bad folks at all—that doesn't follow because your marriage was an unhappy one, you know. Unhappy marriages are sometimes the fate of the best of people.

"Now you don't object, as you have conceded, to Marjorie having the love of her father and possibly loving him. She is entitled to a father, you know, though I must say to you, as I would to him, I regard mothers as a bit more important.

"What would you say to this? Suppose I suggest to Mr. Jones that we keep Marjorie under my jurisdiction here and, since he is a business man in Blank, a near-by city, that we let her spend her vacations with him. I'll be glad to talk with Marjorie before she goes on these visits and explain in a way that I am sure will meet with your satisfaction how important it is that she should love her dear mother as well as her father.

"It appears here in this petition that Marjorie has had only an occasional visit with her father—and that hardly seems fair, you know, I am sure Marjorie will give her consent when we have both talked the plan over with her.

"In the meantime I'll assure Mr. Jones that in my judgment you're a good woman and a good mother and that I am quite confident that you will comply with every convention in your relations with——" and I name her lover.

"I shall tell him that since Marjorie is to remain under my jurisdiction, though dividing the time between the two of you as suggested, I can guarantee to him that while she is with you, you will keep in touch with me. I shall say to Mr. Jones that I know you will be very glad to report about Marjorie's health and schooling either directly to him or, if that should prove embarrassing, through one of my assistants or myself to him.

"You can both come to see me at any time. I have already asked Mr. Jones to stop and lunch with me when he is in

the city, and my wife and I would be pleased to have Marjorie and you lunch with us occasionally, if you cared to, so that we may keep as much in personal touch as possible."

The first Mrs. Jones says she hasn't any objection to the plan I have outlined.

"My principal reason for opposing Marjorie's going to see her father," she explains, "is because it has interfered with her schooling. But if he is willing to accept the suggestions you have made, you may say to him that they meet with my approval."

I agree with her that there should be no interference with Marjorie's schooling. I tell her that in my opinion young children should be with their mothers generally all of the time—with the right of visitation to the father. There is talk about week-end excursions for Marjorie with her father, of possibly longer visits with him during the summer vacation. Definite decisions regarding these matters will come later—they will be reached under the general rule that we must all co-operate in doing what is best for the child.

I explain that some such arrangement as we are planning would probably be the result of the five or ten days of litigation but that there is a big chance that the outcome of a court battle would be far less satisfactory, particularly as far as the interests of Marjorie are concerned, than the programme we have outlined.

"And now, my dear lady," I conclude, "whatever may be your personal feeling will you do me the favour of joining me in a conference with Mr. Jones? And may I ask that we all remember the welfare of Marjorie and that you try to refrain from the resentment you showed a few minutes ago?"

She is glad to enter the conference. And Mr. Jones comes in and the three of us are alone—no gaping crowd in the courtroom, no twenty witnesses "raring to go" with "sensational disclosures," no lawyers, just the "doctor in his office" with his patients.

I discuss further with them the advantages of reaching an agreement without the irritations, delay and expense of litigation, again assuring them that if they want litigation they can have it at any stage of the proceedings. They agree to go through with the conferences.

I decide that before I present my proposal regarding Marjorie it would be safest to talk to her father alone and after that with Marjorie. So I ask Mrs. Jones to step out and wait in the next room until I call her. She leaves, in good humour.

"I have had a fine talk with Mrs. Jones," I tell her former husband, "and I am confident I understand the situation better than any judge on the bench or any jury could."

I then repeat the proposal regarding Marjorie which her mother has already approved. Although he is in a friendly mood he has an objection.

"I don't like the idea, Judge, of her having the complete say-so about Marjorie," he says.

"But, my dear man, she hasn't," I explain. "Marjorie, remember, is under the jurisdiction of this court and as such is its legal ward, at least until she is of age. As long as the proposed arrangement continues she is as much your child as your former wife's."

"Our rules are made out of no less respect for you and your rights than for Marjorie's mother and her rights. Generally speaking, we feel that small children should be in the custody of the mother when her conduct towards her children is such as a mother's conduct should be. There is such a thing, you know, as the right of a child to its mother and this right may be even greater than the right of the mother to the child. You are surely not going to prevent Marjorie from having that right by prejudging her mother—it means so much to every little child. It is rather biological, emotional and the like."

I try to make him understand and I think I succeed.

"But the child's right to her father must be respected, too," I continue, "although I am compelled to admit, as any intelligent father would, that it is the lighter consideration in the life of the young child."

I tell him I am sure I can guarantee that he will have no further cause to complain of the conduct of his former wife. Since we are now all co-operating as friends, I point out, this can be assured through the friendly aid of our court officers and without further necessity of his detectives.

"But," I said, "if at any time you think there is anything wrong I want you to come straight to me with it. Come"

alone and be assured I shall respect your confidence, as I shall that of your former wife."

Well, his final answer is the same as it is in nine hundred and ninety cases out of a thousand, as shown by our juvenile court records. He wants to go through with my proposal. No, he doesn't want another judge. The arrangement suggested is satisfactory and he wants me to continue to handle the matter. He doesn't even think it is necessary to consult his attorneys—"I know if I'm satisfied they will be."

Have we deprived him of any rights? We have not. For as I have been careful to insist, he may still have another judge or resort to jury trial and formal court procedure. But we have done more than preserve his "theoretical rights"—we have done him a practical service. We have laid the basis for actual work in his own interest and in the interest of his child and his former wife.

So he retires into another of the rooms reserved for such purposes (in this sort of work I don't need a bench but I need at least three separate rooms) and Marjorie comes in, unafraid, from her visit with the "lady who tells lovely stories."

And Marjorie and the judge are alone. She is not sworn, she is not put on the witness stand before those gossiping witnesses, some of them harbouring their hates and waiting for a sadistic "kick" from the lips of a scared little girl. There is none of this pathetic, and tragic, spectacle which the stupidities of our courts so often demand.

"Marjorie, my dear child," I begin, "tell me, do you love your mother?"

"Oh, dear Judge, of course I do—you are not going to take me away from her, are you?"

"Of course not, Marjorie, but how about your father—don't you love him, too?"

Marjorie is troubled. She does not answer.

"Why, Marjorie, of course you love your father. He is a nice man—even if he and your mother can't get along together.

You see, Marjorie, your father loves you very much—I know, because I have talked with him. And I have a surprise for you—what do you think it is?"

"Oh, dear me, Judge, You're not going to take me away from my mother?"



"No, my child, and I'm not going to take you away from your father, either. Your mother says she wants you to love him—and now, Marjorie, you do, don't you?"

"Of course, I do," she admits and then stubbornly insists: "But I want to stay with my mother."

"Well my dear, you ARE going to stay with your mother and you're going to help me settle this trouble between your father and your mother. Won't that be fine?"

"Sure, Judge."

"Well, now, I'll tell you just how we are going to do it. Of course, I've had to get their consent—and the surprise is, they've both consented. We're not going to have any trial at all. All those people out there are going home and attend to their own business and we're going to attend to ours. Won't that be fine?"

"All we need now is to get your consent. Now if you don't want to give it, you just tell me so and why and I know we'll be able to straighten things out somehow. You see, Marjorie, you're going to be my ward——"

And then I have a lot of fun explaining that to Marjorie and when she finds she isn't going to be taken away from her mother and the judge is her friend in the bargain she is tremendously interested. And, to make a long story short, the threatened tears have been routed by her smiles and she gladly consents.

I tell her that "that lady who is now her father's wife" is going to be very nice to her—"if she isn't you just come and tell me all about it."

"And now, Marjorie, you sit right here on my knee and stick close to me and between us we're going to settle this whole business so that everybody will be happy."

And Mr. and Mrs. Jones come in together this time and Marjorie beams on them both. I call in the stenographer and we dictate the "understanding and agreement in open court." (You see now how silly it is to call it a "court" but that is a necessary concession to formality.)

Now that this "trial" has been completed with the lawyers outside the "court room," instead of in it, they are invited to join us. I rehearse all that has occurred and ask for their commendations or objections. There are no objections. They consent to the arrangements and the order is entered. The case is settled and the time consumed is less than two

hours. Of course, there are those luncheon engagements, those kindly conference contacts, ahead for the judge, but they are insignificant when compared to the requirements of a court running full tilt in a five- or ten-day trial.<sup>1</sup>

In justice to my profession I must say that, were it not for "economic pressure," many of its leading members would, doubtless, publicly approve this direct and informal method of guarding the welfare of Marjorie. I am sure it would warm the hearts of some of the progressive deans of our modern law schools and of some of the judges of our state supreme courts. While I believe lawyers generally would be afraid of it, many of the best of them would be for it.

I remember well that, either in this particular case or one like it, a departing member of the bar, officially satisfied but personally very much offended, was reported by one of my assistants to have exclaimed: "Oh, it's all right—what else could I do but consent? But there goes a five-day case and a \$500 fee. If this thing spreads, it's going to raise hell with the bar!"

"It's going to raise hell with the bar——" that, after all, was perhaps the main reason for the stubborn opposition, hidden and expressed, to the informal procedures we were developing in our institution of human relations.

If they "worked" in handling the problems of childhood and of family relations, why not in other domains of the courts? And where would it all end—for both judges and lawyers? An entrenched legalism beset with fears: "If this thing spreads——"

The new institution of human relations was a "dangerous" example that must be wiped out. I, as its founder, was a "dangerous judge," whose innovations must be resolutely resisted.

Between me and most of those who controlled the Denver bar, at least, war was almost inevitable—war and for me "The Dangerous Life!"

<sup>1</sup> The fact should not be overlooked that if the "conference method" could have been applied in this case by an institution of human relations and its specialists at the time the divorce was applied for, there might never have been any separation of the parents and Marjorie might have been spared the pain of a "broken home." A better institution for complete wreckage of the home could hardly be devised than the present divorce court. Its chief function seems to be to breed misunderstanding, suspicion, hate and utterly to destroy the morale of social beings.

## CHAPTER XV

LEGISLATING FOR THE INSTITUTION OF  
HUMAN RELATIONS

My primary purpose in writing *The Dangerous Life* is for the promotion of constructive changes in society that promise more for the happiness of people and less for the unnecessary tragedies I see all about me.

In the early part of this century my activities in behalf of the Juvenile and Family Relations Court were primarily to bring about a change in the attitude of the state toward the problems of youth, the home, and the family—to help to salvage instead of destroy it as we were then doing under old wornout systems. This meant the abolition of the criminal court for the hearing of children's cases. Our part in the struggle for that change was not without its difficulties, especially when we attacked causes of crime and injustice. There were hatreds, misunderstandings, and opposition from many quarters. I remember at that time when Dr. A. E. Winship of the *Journal of Education of Boston* brought me to that city to campaign for a juvenile court. The opposition, even in Boston, from certain quarters called for Dr. Winship's enlistment in defence of what I stood for. This was hardly to have been expected in a city that I had always regarded as the home of "probation."

Certain conservative judges then on the bench in Boston not only refused to attend our meetings, but they wrote letters of protest against me and the juvenile court programme. And they were given wide publicity in the daily newspapers. They carried their opposition to the legislature at that time. They said the changes I was advocating would contribute to the increase of crime among youth and to the weakening of the home. This opposition did not, however, include all of the judges or members of the bar.

The changes in the promotion of which I then took such an active part are now universally accepted.

I know the hazard of prophecy, but my enthusiasm for other changes, that I am now helping to battle for, impels me to predict that within an equal time we shall also have

their universal acceptance. Only then can we deal fairly and efficiently with the human problems of our people.

For the promotion of wholesome and constructive change, I have suggested that our present divorce courts and some features of the functions of our civil and criminal courts be taken over by a new institution. For many years I have referred to it as a "House of Human Welfare," or an "Institution of Human Relations." The name or title is not so important, any more than that of "The Companionate Marriage," except as a sort of slogan in which to enlist interest and to get the attention and understanding of the public, without which few changes are possible.

I can hardly be classed as a "reformer" in the general understanding of that term. The laws that I have proposed, and that I now propose, are not so much *new laws*, but the only method by which we can get rid of *old laws*—laws, systems and customs that have little or no application to modern human problems. Thus it is that some legislation is needed in the American states to accomplish the much needed changes that will lead eventually to the legal and final acceptance of some such "Institution of Human Relations" as I have been discussing during the past decade.

The programme for such legislation would include the following:

#### BILL No. 1

A bill for an act (law) to repeal all the present restrictions against physicians having entire freedom to impart contraceptive information to their patients and to others who seek to limit their families in this way.

My own personal opinion would be to put no limitation upon this right of licensed physicians. That is to say, there would be legitimately accessible to all persons, married or unmarried, who wished it, the most scientific information that this profession could give. I am convinced that if they are not permitted to give the best to be had on this subject, that the "bootleg" or questionable information will be quite generally available to the married or unmarried. The commission in charge of the Institution of Human Relations—hereafter explained—could aid in the dissemination of birth control information.

## BILL No. 2

A bill for an act (law) to create a special commission empowered to handle and dispose of all of the divorce, separation, annulment, non-support and desertion cases and indeed every type of case or proper complaint growing out of the relation of the sexes. This of course would include cases of illegitimacy, mental or physical disease—injury to either party—and other possible legal or other proper responsibility of one to the other. The laws relating to such of these subjects as non-support—desertion—statutory rape—etc., as they now exist in Colorado—were so drawn as to be non-penal in their operations as well as penal—for the disposition of certain exceptional cases. This system is being generally copied now in many of the American cities. These provisions should be embodied in such a law. With us in Colorado in my court work perhaps ninety per cent of such cases were listed in what is known as the civil or chancery court side of the docket instead of the criminal or penal side of the docket.

This commission of course would constitute a sort of clinic, furnishing to the family—and by that I include potential parents—certain assistance that in a measure is now obtained from social agencies, such as lawyers or experts from the various professions and mental hygiene experts. It would, of course, call for co-operation from the regular schools and any other helpful agency. It should be under the supervision of the state—conducted at state expense and without cost to the subjects involved—unless in application for divorce—separation or annulment—a small fee might be provided to contribute to the overhead expenses.

I have in mind now one city, where last year there were approximately 20,000 marriage licenses granted and more than 10,000 actual divorces filed. When separation, non-support and desertion cases that have all the elements of divorce are officially filed and added to the technical divorce cases proper, this city furnishes, for example, some 14,000 separation cases as against about 20,000 marriage licenses issued annually. It is difficult to estimate the exact cost to those involved but I believe it may be safely estimated at not less than ten millions of dollars. The whole thing could be done by this commission—that I have sometimes called

the "House of Human Welfare" or an "Institution of Human Relations"—not to exceed a cost of \$500,000. And, from my own actual experience in doing this work officially or unofficially in my own city of Denver, Colorado, I am convinced that more than one-third of the discordant couples could be reconciled. I am positive that by this more scientific approach to this entire subject we would materially reduce the present increase of divorce in America.

I do not attempt here to go into all details—of which there would be quite a number to be threshed out and agreed upon. This commission, generally speaking, would consist of a psychiatrist—psycho-analyst or expert in problems of mental hygiene—a specialist of certain special attainments—from the medical profession—and a lawyer who should have specialized for some time, to be agreed upon, in biology, sociology, psychology. The selection of the committee might be placed in the hands of a civil service commission or—perhaps (in a measure protected by some provisions in the bill itself) to be appointed by a governmental agency.

This commission would have its headquarters in the state capital of Colorado (or other state) just as the Industrial Commission dealing with controversies between employer and employees now has its offices, settling damages, costs and the like that formerly were settled in the courts. The commission would hold meetings at stated times or be permitted to send its assistants or certain of its numbers—under some elastic details—to three or four sections of the state at different times of the year—to hear all applications of discordant couples who for various reasons wish for divorce, separations or annulments. Within a period to be agreed upon, in which through such scientific approach as these specialists are capable of making to each case, an effort would be made to reconcile the couple. This would be done by re-education in sex difficulties and by such advice and help as the commission was capable of affording. If at the end of that time the couple declared, mutually, that they were still utterly incompatible and that reconciliation was not agreeable to either, there would, on this ground alone, be a divorce forthcoming, an honest divorce, without more ado.

If there were no children and either of the parties under these conditions demanded the divorce, it would be the duty

of the commission to grant it. The commission would have the power now given the courts, to adjust all matters of support, alimony, and the settlement of disputes over property and the custody of the children. I am inclined to think as a provision or condition of such legislation, at least for the present, and as a beginning, until this system was thoroughly established and acceptable, a right to transfer a complaint to the courts for trial before a judge should be allowed, where either party expressed dissatisfaction as to a property settlement or disposing of the custody of the children. This might be necessary to answer the objection that we were depriving them of "due process of law" as it is now recited in some statutes of the United States of America. This consideration of course could be settled by the commission, as they are now settled by the court, with reference to the existing statutes of the American states and the practice of its chancery courts in such matters. In such exceptional cases, through the transfer of cases, they would also have the rights, whatever they might be, which the general statutes gave them to appeal to the supreme court. From my experience, however, I am fully convinced there would not be one such case in a hundred where any satisfaction or settlement would be sought outside of the work of the commission itself.

If there were children, a discretion would be given the commission to continue the case for a certain period, possibly one year with the hope of reconciliation. If at that time either one of the parties refused to live with the other and continue the usual marriage arrangement, a divorce should be granted because of that fact. The commission, however, in such circumstances would have the power to hold the husband and father to provide adequately for the support of the wife, who was the mother of the children, and the children. This would be done along the same lines as it is now done by the divorce courts, settling and adjusting the rights of each to community or joint property. I believe at the present time that ninety-five per cent of all the divorces of childless couples, where no property rights are involved, are by mutual consent in the lawyers' offices, generally upon some trumped-up consideration that may or may not exist in reality—generally not. I haven't a doubt that this commission would succeed in reconciling at least one-third of such couples. I feel we did better than this in my own

official and unofficial work with experts and specialists from the medical profession, and in which we had very successful experiences—unofficially of course—along the lines I have mentioned.

### BILL NO. 3

A bill for an act (law) for education of parents with reference to mental hygiene, sex and marriage—their responsibilities to and for their children—to be arranged through school boards providing lectures at certain convenient times on certain subjects concerning child care and training, also for sex education of all youth in schools and universities.

I had a bill along these lines in our legislature as long as ten or twelve years ago. I can hardly enter upon the details here; they were worked out in a number of sections in the bill. This item of legislation would include some plan whereby the state—through its schools—should provide a much more definite and complete line of instruction in matters of sex hygiene and a number of suggestions on subjects that have to do with preparation for a successful married life. This, through some sort of mild compulsion, though I would prefer to have it compelling through an educational scheme so appealing that compulsion would not be necessary. Yet if we have compulsory education for children it may well be asked—why not for parents? I believe that, generally speaking, marriage is an art for the large majority of people—and as such should be provided for through a much more definite and certain scheme of education than we have now. Of course, speaking personally, I think it should begin in the very early lives of the children.

### BILL NO. 4

A bill for an act (law) repealing our present laws providing arbitrarily for the support by the husband of the wife. Many of our present laws make such provision regardless of whether the wife is economically more competent to provide for herself than her husband is. It would attempt by some measure of detail to regulate the allowance of alimony—for support. This regulation should be with reference to the economic status and particular facts in each case. Of course, a great deal of discretion would have to be left to



the commission referred to. The strictest kind of provisions should be made for requiring the husband, father, to support the mother and children, especially where the wife was dependent. It would, of course, also require the mother to furnish that support for children in proper cases. Generally this responsibility should be placed upon the father. If the state could not compel the father to support the children, or where he is unable to do it, or where there is no father, and the mother's care of the children is needed in the home, the bill would make ample provision for the support of the mother and children by the state, the children to be in the custody of the mother unless, of course, the mother was incapable or unfit to discharge the responsibility, the father having the right to visitation in proper cases, or custody, as the case might be.

The rule would be legally recognized, however, that custody of very young children would be in the mother—this, of course, from the standpoint of what is for the best interest of the children.

In time the functions of such a commission or "Institution of Human Relations" (I have also called it a "House of Human Welfare") could be extended to include many other matters and cases now rather inefficiently dealt with by the courts.<sup>1</sup>

<sup>1</sup> My friend, Mr. Thomas A. Edison, in a recent article in the *Saturday Evening Post*, speaking from the standpoint of those controversies, questions, and litigations growing out of patent cases and the problems of inventions and inventors, has protested bitterly, not only against the utter inadequacy but generally the utter inefficiency now going on under the present legal system of handling or mishandling such matters. He finds it almost worse than no remedy at all, since mostly it only contributes to the difficulties in ruinous expense and the hopelessness of any satisfaction for anybody involved. He strongly urges a commission of specialists from the scientific professions to handle something that they are educated to know about since generally the legal profession are so educated as to be just about as incompetent to handle it as they are to handle the problems of juvenile and domestic relations courts.

And, again, lest anyone be disturbed that I am advocating anything so revolutionary as to give scant attention to these proposals, let it be noted that much of our old-time litigation involving damage suits and accident liability between employers and employees has been taken over by commissions without the intervention of courts or lawyer (allowing of course for certain very special cases).

I have already pointed out in our book, *The Companionate Marriage*, how the very intelligent governments of the Scandinavian countries have now established commissions to supplant their conventional court procedures for the hearing of divorce cases. They have the rather encouraging result of showing a divorce record eight or ten times less than the one we have

I have never claimed that the Institution of Human Relations is any panacea or cure-all for the ills of society, even of those at which it is aimed. I merely contend that the changes it proposes would be so remedial, curative and helpful as to justify their adoption.

I have suggested the right or duty of the commission to deal with the subject of birth control because, in the changing morals of our civilization, it furnishes a great opportunity for constructive, helpful service to humanity.

The economic independence of women is here. Nothing will stop it, because nothing should. But they can have no freedom to accept its full responsibilities, as well as benefits, until completely released from the slavery of sex; that is, until as a result of her love life, or sex relations in or out of wedlock, there is no more danger of her approaching an unwanted pregnancy than there is in the case of the male, as nearly as it is in the power of science to guarantee such a result.

If this should disturb the conservative moralists over the morality of women, then let them get over their dependence upon artificial restraint as a means to morality. Let them put more faith in real religion, in real education, culture and good taste. Their attitude to-day is singularly lacking in faith, in education or religion as a means to morality. Rather do they constantly show their own weakness by insisting more and more upon coercion, censorship, prohibition and all the forces of violence. They believe people can only be kept good by keeping them ignorant, or stay married because they have to and not because they want to.

The hope of the new morality and for more happiness of humanity is in the higher and finer forces which I have indicated in this book—that come from within, and not without—in those natural restraints and not the artificial restraints that were needed mostly in the days when people were controlled by superstition, threats and fear. It was a “racket.” Generally speaking, the civilization of this age will do right because it wants to, not because it is forced to.

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in the United States: and how an intelligent country like Holland has legalized the “companionate” relationship in marriage by recognizing and permitting a scientific direction of birth control with very good results.

The Institution of Human Relations will help to show them the way.

It is my hope to help establish a League for Human Relations in this country to promote this constructive programme in the several states. It will probably have to go to the people with such laws as those described through the initiative and referendum provisions of the constitutions of those states where that right exists. This was what we had to do with portions of the "horses' rights for women"<sup>1</sup> laws and other social legislation in Colorado. That was after certain reactionary legislatures had not only moved to table these "Lindsey bills" (as they scornfully called them) but also moved further "that we spit on 'em"<sup>2</sup> as mockingly and solemnly in procession they proceeded to do around the waste basket. To "get even" —to show their hatred for an "enemy"—they were perfectly willing to take it out on the women and children of our state, with conscious or unconscious brutality. But when the people had the chance through the "initiative" they often turned rebukers and voted by enormous majorities to make laws of some of these proposals that had been spat upon.

Some wise and courageous state, pursuing some such constructive policy as I have advocated, will, by adopting it, within a generation stay the increase of litigation, of more judges and more lawyers, and all the expense that it entails, to an extent now undreamed of. It will increase marriage, reduce needless divorce and add to the stability and permanence of marriage, the family and the home. It is for these institutions that I have battled all my life, and with others I expect to keep up the good fight.

<sup>1</sup> "Horses' Rights for Women" was a slogan we used in one of our campaigns for our maternity and unborn children's laws. I had noted on a visit to one of our up-to-date stock farms that they gave great care to the mothers of horses. They had prenatal and after-birth care. I knew thousands of women and children who did not. The horses thus "bred" and cared for were of greater value. Apparently the women and children were not since they lacked anything like equal consideration.

<sup>2</sup> In assailing those it hated and feared these "expectorations" were part of the habits of the "Beast" in its contempt for our campaigns for human rights. When my wife and I returned from our visit to President Wilson in behalf of the women and children victims of the historic Ludlow massacre in the capital and labour wars of 1914 a dignified and sanctimonious member of the Chamber of Commerce (afterwards indicted as a bank swindler of widows and orphans) proposed a resolution, at a meeting of that patriotic body, that we be met on our return to the city by an appropriate committee and there "spat upon."

The contribution we may thus help to add to the peace, power, plenty, and happiness of the human race will be beyond estimate. And in the face of such a prospect how joyous must be the adventure of those who have had a part in it, even though it should also hold for them the conflicts and misunderstandings of "The Dangerous Life!"



*EPILOGUE*

I. THE BATTLE WITH THE BISHOP



## A

### A BURNING AT THE—PULPIT

ON Sunday morning, December 7, 1930, I found myself being roughly shoved by ushers down a side aisle in the Cathedral of St. John the Divine, New York City. Blows rained upon me—about my head, my back, and legs. Three thousand men and women in the fashionable congregation were in an uproar. As I was briskly catapulted toward an exit, hostile eyes glared at me, angry voices pierced the tumult: "Kick him . . . punch him . . . throw him out!" Like a mad bull, a tall, white-haired, frock-coated "Christian" bore down upon me, dancing with rage. "Let me slug him," he implored with murderous glances. As I was swept protesting along, rude epithets with the sound of "lynch him" were hissed in my ears. A dignified churchman let loose in curses. In the surging savagery there was lost to me and my assailants the words of the serene ascription just begun by the bishop as I spoke and as he clamped his stern thin lips that snapped his concluding words like a steel trap, turning suddenly, as I thought, to descend from the pulpit, but in reality to salute the Most High. "Now unto God the Father, God the Son and God the Holy Ghost be ascribed, as most justly due . . . power . . . dominion . . . glory, world without end. Amen." Never since the 1924 Ku Klux Klan campaign in Colorado had I seen such fanaticism and bigotry.

As I was manhandled and beaten, my resentment rose. "He can't lie about me," I cried in the face of the mob, "even if he is the bishop."

Police detectives came to my rescue. One of them caught me or I would have fallen headlong after a vicious shove from a wrathful communicant down the temporary wooden stairs outside the exit of the mighty cathedral.



Women streamed out of the place to gloat over my enforced departure. "He ought to be lynched," one of them yelled. But, outside the church, many of the onlookers were friendly.

Battered by the blows of the devout, to use the phrase of the New York *Telegram's* reporter, I was hurried by the police into an automobile and taken to the West 100th street police station, where I was charged with disorderly conduct.<sup>1</sup>

What had happened to precipitate this rather startling turn in events? On Sunday morning, knowing the bishop was about to attack me, I had gone alone to the magnificent cathedral. Quietly I had entered the crowded auditorium, making my way unobserved among the fashionably arrayed Christian élite to a seat within a few feet of the press tables near the pulpit. The beauty and elegance of the scene had not escaped me. I had found my senses thrall'd by the flooding harmonies of organ and choir, the solemn cadence of litany and prayer. In this sequestered hall, drenched with the peace of a medieval ritualism, the sharp issues of the harried, torn, and tumultuous outside world faded into the distance. Surely this was not the place to assail any poor proposal of mine dealing with the flesh-and-blood problems of a fleeting day.

And yet as I looked upon the stern face of the bishop beginning his widely advertised sermon in the pulpit above me, watched the nervous dangling of the heavy pectoral cross against his flowing vestments, caught the betraying tremor of those spotless lawn cuffs, grim forebodings descended upon me. The tirade was on. Again I was living "The Dangerous Life," this time in the very capital of the reactionary ecclesiasticism which I had dared to challenge. Launching forth openly in war on the "Broad Church" in his own denomination, the bishop excoriated the Episcopalian clergymen who, defying him, had invited me to address the New York Churchmen's Association. Striking at his recalcitrant clerics over my head, the reverend gentleman for the better part of an hour poured out his malice upon me and

<sup>1</sup> I was released on my own promise to appear in the police court the next morning. Arthur Garfield Hays was retained as my attorney. On December 17, Magistrate Dreyer dismissed the case on the ground that the complaint charging disorderly conduct was not properly drawn. He immediately announced that another complaint could be filed accusing me of interrupting a meeting in a house of worship. The first complaint had been signed by the police officer who arrested me. No one being willing to sign the second, the case was dropped.

the social ideals for which I had given the best years of my life. The blacker he made me out, the blacker became his enemies within the church!

Coldly calm, the sneering ecclesiastic accused me of breaking down "the moral defences of the young," of "trying to destroy the moral foundations of our life." I was "a man who stands openly for legalized free love under cover of the term, 'companionate marriage.'" My political disbarment by the Colorado Supreme Court was revived and the lying words of the recently defeated former Chief Justice Greely W. Whitford in relation thereto impudently repeated. I was guilty of "professional misconduct" and "false to my oath," although this vindictive prelate well knew, in the very midst of his orgy of hate, that the California state bar, with the full record of the Colorado case before it, refused to ask the California Supreme Court to disbar me and declined to take "any other action in the matter."<sup>1</sup>

Abusive epithets sizzled through the air from the pulpit of the Cathedral of St. John the Divine: "Foul and wicked thing (this book called *The Companionate Marriage*) filthy, cleverly written propaganda for lewdness, promiscuity, adultery, unrestrained sexual gratification. . . ."

Surely the bishop had run amuck. He had received my telegram and my letter advising him of my position. My books, furthermore, were open to inquiry. There could be no excuse for this vituperation and misrepresentation.

And so as I sat looking up at this embittered cleric, I determined that his abuse should not pass unchallenged. And through my mind raced the phrases of my intended protest.

"Bishop Manning," I planned to say after the sermon, "you have falsely represented me. If this is not a house of justice, it is not a house of God. And in justice I ask you for five minutes in which to answer you. You have not read my telegram and my letter to you giving my side of this case. If you have not sportsmanship enough to let me

<sup>1</sup> He also knew, or could have known, as a respected American lawyer, I was an honoured member of the bar of the great State of California, with the right to appear as a lawyer in the United States Courts and other courts of all the states of the United States, except in certain of the state courts of Colorado, where my political and personal enemies were temporarily in control of a majority of the supreme court.

speak, you have no right to hit below the belt, even if you are a bishop. Will you read or let me read my telegram to you showing that I was vindicated in that crooked political disbarment case you spoke of and that I am now an honoured member of the bar of California with a right to practise law in every state in the Union except Colorado?

"The Colorado judge you quoted was recently defeated by the people of my state largely on that issue.

"Unless you read what I wrote, you are unfair to me and what I stand for and you have not presented me or my case fairly."

Unexpectedly the bishop reached an end with an especially bitter denunciation of me as an advocate of "free love." I saw him descending the pulpit stairs. I thought he was trying to evade me.

And so I found myself indignantly leaping upon a press table and demanding the right to be heard.

"Bishop Manning," I cried, not knowing the prelate had turned from his denunciation to the ascription called for at that point by the ritual,<sup>1</sup> "you have falsely represented me. If this is not a house of justice it is not a house of God. I ask for five minutes to answer your unfair attack——"

But I got no further.

In the midst of wrathful mutterings, shouts and hissing epithets, I was pulled by ushers from the table and, as the newspaper headlines put it, "thrown out of the church."

My ejection from the congregation at once became the subject of widespread comment in which the physical incident, unfortunately, overshadowed to some extent the more vital phases of the baffling controversy between the bishop and me. Letters and telegrams began to pour in upon me from America and foreign countries in such numbers that answers were impossible. Ninety-nine per cent of them were friendly. Five hundred Dartmouth college students issued a protest against Bishop Manning's conduct. The *New Republic*, buoyant journal of liberalism, thought I need "hardly have taken the trouble to reply to the bishop"

<sup>1</sup> I regret breaking into the bishop's ascription that he had begun though I do not apologize for protesting in church against his unfair attack. I am not familiar with Episcopalian ritualism.

In the Grace Community Church, in Denver, a Methodist institution of which I am a member, it is not customary for the pastor to engage in an ascription immediately following his sermon.

but nevertheless expressed the wish that the "practice of standing up in church and challenging the minister would spread." "We can think of nothing," says the magazine editorially, "which would have a more salutary effect than for the clergy to live in constant dread of this." More staid in demeanour, if no less liberal, *The Nation* regrets the "sorry scene" but nevertheless brands the bishop's sermon as "ill-timed and unjust." It accuses the clergyman of "misrepresentation of the grossest sort." Says Heywood Broun, brilliant leader writer of the New York *Telegram*, urging that I should have gone quietly back to my hotel and summoned the newspaper men: "On a Monday morning the first page would have been this. . . ." Nevertheless, Broun condemns the bishop of either "gross stupidity or manifest perversion of the facts" and objects to me because I am "too rigid a moralist."

The *Telegram*, itself, editorially maintains a neutral position on "Judge Lindsey's views" but, referring to Bishop Manning's attempt to prevent me from addressing his clergy, reminds him that, "America is a country of free men and that free speech for ministers, as for anyone else, is one of the most hallowed concepts of American social philosophy."

The cathedral incident stirs up the fundamentalists of Los Angeles, California, and sets the Rev. Bob Shuler, of the Trinity Methodist Church, South, roaring over the radio in vituperation against "free love" and in laudation of the Episcopal clergyman. On the other hand, in the same city, I am defended by no less a personage than Professor Edward A. Ross, head of the sociology department of Wisconsin University, during an address before several thousand Southern California teachers attending an annual institute. The cultured rabbi, Hermann Lissauer, also of Los Angeles, takes the bishop to task for his failure to understand me. Harry Elmer Barnes, professor of Smith College, introducing me to 3,000 persons, December 20, in Mecca Temple, New York, confidently proclaims that, "within fifteen or twenty years the conservatives in the matter of sex discussion will be all rallying around Lindsey."

And so the battle rages across a continent and I hasten to bring to the cause—my cause and the cause of the courageous and forward-looking souls of America—such

reinforcements as I have at my command. I give them the incontrovertible facts that they may feel no shame of me nor of the social programme which they have joined with me in advocating.

## B

## A "MAD" MANNING ANSWERED

I PROPOSE now to prove that Bishop Manning was guilty of falsehood when he approved the assertion that "*The Companionate Marriage* is nothing but propaganda for gross immorality" and when he joined with the political Colorado Supreme Court in asserting that I was disbarred in Colorado for professional, or any other kind of misconduct.

First, as to *The Companionate Marriage*.

The worthy bishop is not the first person of public consequence to allow his passion, prejudice and ignorance to govern in the presentation of this subject.

Former Chief Justice Whitford, recently defeated for re-election, the proud political ally of Colorado's public utilities and other politically corrupting special interests, made much the same sort of spectacle of himself when on February 24, 1930, he handed down his opinion in a "contract marriage" case. According to newspaper accounts, Dr. Charles M. Duncan and Hattie Gibson had entered into an antenuptial agreement to live together in marriage only so long as either pleased. Under the terms of the agreement if the union were disrupted the man was to settle with the woman at the rate of \$100 a year for each year of their life together. About a year following the marriage Dr. Duncan paid Mrs. Duncan \$100 as full settlement under the agreement.

Dr. Duncan dying intestate, Mrs. Duncan sued the administrator for one-half of the estate, the widow's share.

The case went on up to the supreme court, where the antenuptial contract was declared void as "against public policy."

Of course, this weird relationship had little basic similarity to The Companionate Marriage programme I had proposed.

But Whitford, a personal and political enemy, struggling to retain his slipping political hold on the "church vote" of Colorado, by further attempts to discredit me and to offset the effects of my fresh victory before the California state bar, made it appear as "Companionate Marriage" in his prevailing opinion and thereby gave the newspapers copy and lying publicity.

"The contract," he said, "is nothing more in effect than an attempt to legalize prostitution. . . . The wife under its terms was made a base hireling."

The fatuous twaddle indulged in by the bishop and the now defeated supreme court judge is paralleled in the pronouncement of hundreds of moulders of public opinion in our daily press. Not long ago I made a survey of these stupidities as they reached me in the form of newspaper and magazine clippings.

"My understanding of the term, 'Companionate Marriage,'" says Professor E. W. Patterson, of the law department, Columbia University, as quoted in the Brooklyn *Eagle*, "is that the parties make an agreement that they will live together three years without having any children. At the end of that time if either is dissatisfied he will resort to such means as are available to obtain a divorce."

Matching this brilliant exposition of the subject are the observations of the influential Dorothy Dix, whose advice on love matters according to the authors of *Middletown*, is followed by more than three-quarters of the population of the typical community under study.

Miss Dix says that Companionate Marriage consists of "taking out a temporary marriage license instead of a permanent one and the license has a divorce coupon attached which gives the holder a cut rate on divorce and makes it easy to get rid of your husband or wife if you don't like him or her."

Again: "Companionate Marriage differs from the orthodox marriage chiefly in that it is not cluttered up with babies or by a wife depending on her husband by any duties or obligations. . . . There is to be no control except birth control and the tie that binds is to be a slip-knot so loose that either one can walk out when so inclined and whenever they get bored."

I pass by a Syracuse newspaper clipping in which a supreme court judge urges that "Lindsey be ducked under the town pump."

I run through many similar misconceptions. But why continue quoting them? Their sole importance is that they clearly establish the persistence of a certain type of mind, under bias, in resisting the impact of fact. In less than a quarter of an hour Bishop Manning, the defeated former Chief Justice Whitford and the remainder of my high-powered critics, could have ascertained the truth about my Companionate Marriage programme if the truth was what they were after. They could have turned to the first paragraph of the preface of the first edition or to the "Foreword" of the later edition of *The Companionate Marriage* and found in my "answer to the critics" a reasonably concise statement of the whole proposal.

It is true that Gertrude Atherton, being possessed of the intellectual curiosity that goes with high-type artistry, read my book before she attempted to demolish it, as requested by a certain magazine, and thereupon declined to assail it, explaining that she agreed with every word of it. Now it would not be fair to expect as much from the bishop or my bitter political enemy who until recently defeated ornamented the Supreme Bench of Colorado, as it would from the penetrating brain of a Gertrude Atherton but I think the bishop, at least, ought to have sought out the easy ABC version of the "foreword."<sup>1</sup> May I call it to his attention here?

"The Companionate Marriage," I said in as simple, straight forward language as I could muster, "is a programme which proposes to legalize, stabilize, and direct certain of the customs, privileges, and practices of modern marriage; practices which are already in widespread use, but which have no legal status or direction.

\*The first of these is birth control.

"The second is divorce by mutual consent for persons who, having no dependent children, cannot remain married by mutual consent; such divorce to be granted only after a court of domestic relations had failed in a humane and scientific effort to reconcile the couple. (This would be

<sup>1</sup> *The Companionate Marriage*, Star Dollar Library, Garden City Publishing Company, publishers, Garden City, Long Island, New York.

done through what I have called a house of Human Welfare.<sup>1</sup> It would consist of experts such as psychiatrists and specialists, largely supplanting the present divorce courts. This would not be 'easy divorce.' It would be honest, scientific divorce.)

"The third concerns alimony and support. It would not be the arbitrary legal right of the wife, as at present in so many states, but would be allowed when, in the judgment of the court, circumstances justified it. By the same token the property rights of childless couples would be equitably determined with reference to the economic status of the parties and the facts in each case.

"The fourth feature of the programme would be for the state to undertake the education of youth and married couples in the art of love, the laws of sex and life, better to equip them for the serious duties of marriage and parenthood. Marriage is an art and as such it should be taught in the schools.

"All of these four points in this constructive programme are discussed at length in this book and emphasized in my other writings and lectures on *The Companionate Marriage*.

"Other aspects of marriage are discussed in this book, such as those with reference to the state imposing conditions to marriage as regards health and the physical capacity and ability of people to become parents. But they are no part of the constructive programme of *The Companionate Marriage*. They could only be seriously considered in case that programme is legalized and scientifically established.

"Many chapters of the book deal with certain speculations and experiences with marriage, suggested by my work in a domestic relations court. But these, also, have little or nothing to do with the programme of *The Companionate Marriage*."

This ought to be clear enough for the spiritual head of the Cathedral of St. John the Divine, the recently defeated former Chief Justice Whitford and all their admirers, but if they are still at sea perhaps further elaboration will not be amiss.

<sup>1</sup> I think a less easily understood name for the "House of Human Welfare" is "The Institution of Human Relations," the development of which in Denver's Juvenile and Family Relations Court it is one purpose of *The Dangerous Life* to explain.



Let me remind the bishop that it is no longer possible, even for strategic purposes, to pin sole responsibility for birth controls propaganda upon me. "Respectables" in all ranks of society are not only practising it (many of them, no doubt, in the bishop's own church) but are openly approving its legalization. It has the endorsement of powerful organizations in the Protestant church. The Y.M.C.A. and the Y.W.C.A., for instance, look with increasing friendliness upon it. Its absolute necessity as a basis for any kind of enduring world order and peace has been convincingly set forth by Professor Ross, of Wisconsin, in his book, *Standing Room Only?* And—irritating as it must be to the New York prelate—a world figure in his own denomination, the Very Reverend W. R. Inge, Dean of St. Paul's, turns his facile mind upon the subject, "Birth Control and the Moral Law," in the feature article of the *Atlantic Monthly* for December, 1930, and in a churchman's language reaches conclusions in essence not so very different from my own.

"In the very difficult problem which has been the subject of this short paper," concludes Dean Inge, "my own opinion is that we have in our hands an instrument which is capable of being turned to great good and still greater evil. It may be so used as to further the cause of social hygiene, *which indeed can hardly be advanced without it.* (Italics mine.) It may be so used as to secure the optimum population in every country and to put a stop to the dysgenetic selection which at present threatens the whole future of the white races. Or it may be an instrument of moral dissolution and race suicide. In any case it has gone much too far to be checked. "Those who merely denounce it—" listen, dear bishop, to Dean Inge—"are like Mrs. Partington trying to thrust back the Atlantic with her mop. We must face the problem without squeamishness *and without prejudice—*" italics again mine—"but with the conviction that there are established moral laws on which humanity cannot turn its back with impunity."

Incidentally, the bishop may note that Dean Inge in his article, though he thinks my "revelations" as to our changing morals may be "exaggerated," manages to cite me as an "authority." Indeed, it is quite obvious that in his casual mention of my name he ran no risk of apoplexy!

But I leave the bishop and the dean to fight out the birth control issue.<sup>1</sup>

As to that part of The Companionate Marriage programme dealing with "divorce by mutual consent" I must emphasize the fact that this proposal is primarily for persons having "no dependent children" and I must again insist upon the importance of the rôle to be played in that programme by the court of domestic relations or, as I prefer to call it, "The Institution of Human Relations."

I am utterly sincere in outlining the functions of such an institution and it is here, doubtless, that some outstanding students of modern marriage relationships part company with me. I can well imagine that Socialist Broun, who rates me as "too rigid a moralist," may disagree with me on this point.

But, as I see it, some modern substitute for our bungling dishonest and putrid divorce court system is a social necessity. My twenty-eight years of work in the Denver Juvenile and Family Relations Court gave me a slant on the permanence of human affections not shared by some of my contemporaries. As the result of our human and scientific approach to marriage problems we were able—with contending lawyers and official court procedures out of our way—to reconcile the differences of from one-third to one-half of all the couples

<sup>1</sup> "The Churchman, leading church paper of Bishop Manning's church, in its issue of January 10, 1931, says editorially:

"We had supposed ourselves shock-proof in these very degenerate days, but suddenly we find ourselves shocked beyond measure—and that by no less distinguished a body than the General Assembly of the Presbyterian Church. On our desk lies a volume, *Twenty-four Views of Marriage* (Macmillan), put out by the members of the Commission of the Presbyterian Church in the U.S.A., on the Study of Marriage, Divorce and Remarriage, a commission composed of six ministers of that communion and five ruling elders. And one of the twenty-four essays in this volume is contributed by Judge Ben B. Lindsey! And worse yet, much worse, the title of that essay is none other than 'Companionate Marriage'! Something, surely, must be done about this. Haven't more than one hundred clergymen of the Episcopal Church just been told by a bishop that they must not allow themselves to be tainted, even behind closed doors, by this 'propagandist of free love, etc., etc.'? And here the Presbyterian Church goes and prints this propaganda in an official volume, which can be brought openly (for \$2.50), under its imprint, in any book shop! We call upon the officials of this great communion to hustle around and gather up the faggots. We insist that these six ministers and these five ruling elders be burned at the stake. And we insist, further, that the burning take place in New York (with choice ringside seats for Episcopalians), that, forever after, this historic episode may be a warning against the menace of an open mind!"

that came unofficially to the court.<sup>1</sup> And without expense to anybody!

In other words, many discordant couples only "think" they want a separation which, when achieved (thanks to the divorce court), wrecks them physically for the remainder of their lives.

I have seen the methods of our Institution of Human Relations add to the permanency of marriage and the American home that we are all so concerned about.

Now this does not mean that I go with Bishop Manning and his followers in the demand that two persons, wholly incompatible, who do not wish to live together, should be forced to do so. It means that our Institution of Human Relations, with its commission of psychiatrists and other experts, would attempt honestly and scientifically to ascertain whether they are really incompatible and whether they really wished to live together. It means that we would have an end to the present system of obtaining divorces through subterfuge, collusion, fraud, and perjury—and of obtaining them without any effort at scientific reconciliation. Of course, if this enlightened effort that I am proposing fails, the divorce, in my opinion, should be granted.

I turn to another point in my programme to improve modern marriage (which is, companionate marriage): the proposal to educate youth in the schools and colleges in the art of marriage in order that they may be better prepared for the responsibilities of domestic relations: and the further proposal to extend that education to married couples themselves. To me it is a sad commentary on our social intelligence that groping, suffering human beings should have to depend for "light" upon marriage problems from Dorothy Dix and the various other "sob sisters" of our age.

Bishop Manning may like it. I don't.

As to The Companionate Marriage programme relative to alimony, little need be said. Close to the courts, as I was in my Denver work, I saw the abuse of alimony and support through arbitrary laws that in our state and other states required the man to support the wife whether there were children or

<sup>1</sup> I have had more to say about our technique in handling these domestic relations problems in chapters of *The Dangerous Life*. Part of the "argument" developed in the present chapter was first printed in *The Los Angeles Record*, a Scripps-Canfield newspaper, in a series of articles on my life work.

not. I had seen men whose marriage had been a failure compelled to support wives who often had more money than they had—because of this old-time arbitrary law. And so I proposed that, unless both parties agreed otherwise, alimony be granted, not as an arbitrary right, but with reference to the economic status of the parties and the facts in each particular case.

In this modern age Bishop Manning is entitled to take an opposite stand on this alimony question if he wishes to, but, in so doing, he is in peril of rendering himself merely ridiculous.

As I looked out over the world I saw the changes in our marriage system being accomplished through the suffering and waste of legal evasion and nullification. I became aware that:

1. Some kind of contraception is now common practice, but underhand and illegal,
2. Divorce by mutual consent is now common practice, but false and illegal (accomplished through fraud and collusion).
3. Education of the youth in the art of marriage is being practised, but is false and illegal.
4. Alimony with reference to the economic status of the parties is common practice, but underhand and illegal.

I was for bringing order out of moral anarchy and chaos. The Companionate Marriage programme proposed to legalize, stabilize, and scientifically direct the marriage customs which are already here and which the combined forces of reactionary ecclesiasticism and legalism cannot annihilate in a forward-moving world.

Now a word about labels. Reactionaries like Bishop Manning, on the Atlantic coast, and the Reverend Bob Shuler, on the Pacific coast, are fond of them: "free love," "trial marriage," "contract marriage." These incitements to passion and prejudice follow me wherever I go, closing the minds of timid folk against the social ideals it has been my privilege to serve.

In Denver these labels were a conspicuous feature of the continuous campaign to hamper and hamstring me in my work. They were, as I have repeatedly charged, deliberately used by the reactionary elements of the institutions of ecclesiasticism and legalism in the effort to prevent any change in conditions which now contribute to these institu-

tions' power and profit but which are destructive to the happiness of the human race, the permanency of marriage and the stability of the American home.

What had I to do with "free love," "trial marriage," "contract marriage"? Nothing. I have never in my life advocated them. As an honest observer I have been compelled to note the existence in the world to-day of a wide range of "experimentation" in sex relationships, but even a bishop cannot force me to accept responsibility for that. Let him put the blame where it belongs—on his steel-trap, coercive marriage system which is driving people away from lawful wedlock!

I am against "free love." This term, in its popular acceptance, means the practice of a couple living together outside of lawful wedlock. I don't think it is safe for women—and one of the main purposes of my life work has been to make civilization safe for womanhood and childhood.

My position is that unless we are going to permit "free love," now known to be on the increase, we have got to strike the mediæval shackles from marriage and thus encourage people to enter the relation.

I am for legal marriage—I think it is much better for a woman to risk maternity in lawful wedlock than out of it.

"Trial marriage," as I see it, falls into the same general category as "free love." Under it, people live together out of the bonds of wedlock until satisfied to enter into wedlock. If the trial does not prove a success, they may then separate. The same objection holds as to "free love"—it is dangerous for woman.

And there is nothing more to be said for "contract marriage" than for the other two labels. As it is popularly understood, "contract marriage" is an agreement between a man and a woman to live together for a certain period of years at the end of which the arrangement is terminated. It, too, is fraught with danger for woman and I am against it.

With the Companionate Marriage programme realized, such fads and fancies as "free love," "trial marriage," "contract marriage," will, I am convinced, be much less acceptable in certain circles than they are now.

Now, for the purpose of further clarification, even at the risk of repetition, I desire to quote from my address before that splendid gathering in Mecca Temple, New York. In

this audience, it was obvious, I was among friends. As I answered the bishop point by point my words were interrupted by round after round of cheers and applause.

"Bishop Manning," I said, "seems to have found in the circumstances of my unsolicited invitation to address the clergy of the Churchmen's Association of New York on the subject of marriage and divorce, or what I meant by 'The Companionate Marriage,' an opportunity to administer some chastisements. But he had no right to assail my moral integrity and moral character, or to misrepresent to his congregation the meaning of 'The Companionate Marriage' programme mentioned in our book, in order to stir up the resentment of his diocese, either against me or a certain element of his own clergy.

"Early in the afternoon of Saturday, December 6, 1930, the day before Bishop Manning's attack upon his clergy, upon me and our book *The Companionate Marriage*, I had delivered to him a letter and an extended telegram that was typed, and to which I also attached a short letter, that was for the second time delivered to him early on Sunday morning, December 7.

"I called his attention to page after page of our book, making perfectly clear what was meant and there described as 'The Companionate Marriage'. That the book was in two parts, (1) an account of my experiences in a domestic relations court, that had nothing to do with part (2) that concerned what I called the programme of 'The Companionate Marriage.'

"I explained to him that as used in this book and my lectures and thousands of public pamphlets circulated all over the United States 'The Companionate Marriage' was not free love, or trial marriage, or any new kind of marriage. That the term 'companionate' was merely a label or title for what was discussed in my books, my lectures, my debates, and magazine articles as a PROGRAMME FOR THE LEGALIZATION AND SCIENTIFIC DIRECTION OF THE ADMITTED AND ACCEPTED HABITS AND CUSTOMS OF MODERN MARRIAGE, THE KIND OF MARRIAGE BEING PERFORMED BY PRACTICALLY ALL OF THE CLERGY IN PRACTICALLY ALL OF THE CHURCHES. And pointing out specifically the book and page—since my letter carried with it the book with pages marked so that they could be readily found and there could be no mistake—it was made perfectly clear that in modern marriage there are two rela-

tionships of the sexes. One is the 'procreative,' namely, for the begetting of children, and the only one permitted by the ancient church doctrine expounded by Bishop Manning. It is the single and only relationship of the sexes among domestic animals during mating time for the begetting of their species. But among human beings, that relationship is 'companionate' as well as 'procreative,' as pointed out by all modern sociologists.

"That this 'companionate' relationship is accepted now and considered perfectly proper and constitutes the great majority of the relations of married people in all of the churches is also admitted by them. It (the companionate) is that relationship of the sexes with the deliberate intention of avoiding the 'procreative' until it is desired—that is, without intending to beget children until they are wanted. This is generally forbidden by the laws of the larger part of the church and state by its laws against birth control. It is said by the reactionary element of the church represented by Bishop Manning that such sex relationship is immoral and sinful, and violates the rule of strict continence except for the purpose of the 'procreative.' There must be no artificial interference with that result.

"I pointed out in the communication sent Bishop Manning through my letter and book that modern marriage is determined not by the ceremony of old-time ecclesiasticism represented by Bishop Manning but by the habits and customs of the people in marriage, and since the great majority of them practice the 'companionate' without any serious condemnation by society it was resulting in all kinds of tragedies among the womanhood and childhood of our country. This is largely because it was without any legal, social or intelligent direction. I had pointed out again and again, as was known or could have been known to Bishop Manning, that this accepted habit of the great majority of married people in all the churches, even though banned and forbidden by Bishop Manning's church and other churches, was leading to a moral anarchy, that, unless given some decent social direction, was contributing to mental torture among women and physical difficulties of hundreds of thousands of them, and to the unnecessary death of hundreds of thousands of women, as well as the slaughter of from one to two million unborn children every year in this country."

## ONE

"As the first point in this programme labelled or entitled 'The Companionate Marriage,' I ask, as I have asked that the infamous Anthony Comstock federal law applying to all the states of the Union against the dissemination of scientific contraceptive information, or what is more popularly known as birth control, should be repealed; and that somewhat similar laws, or hobbling customs, in the great majority, if not all, of the states should also be repealed or revised so that the suffering womanhood of this country could have scientific help and information on this subject when they so desired.

"If that was against their religious dogma, surely I never asked that anyone should violate it. I have only asked for a freedom of choice for a free people in these matters, that no one church rule should be permitted to control people whose religion or independence caused them to differ on this subject from people bound by church dogma, or no dogma, that did not apply to them. The constitution of our country forbids the union of church and state. No church has a right to force its dogma into the statutes of this country whether it be prohibition of liquor, prohibition of birth control, or the prohibition of divorce. The intimidation of politicians by ecclesiastical tyranny is getting to be one of the scandals of this age.

"In the place of these prohibitive laws inspired by reactionary church tyranny, I have taken my stand with the liberal clergy of the Protestant churches and others for substituting constructive legalization that would relieve the womanhood of this country from the devastating tragedies I have seen in my domestic relations court work of bootleg contraceptives and the ignorance, mental torture and physical suffering among millions of women, to which these infamous prohibitive laws are direct contributors.

"I charge that they are also contributing to the rise of promiscuity, free love and other unconventional relations of the sexes in America. It is because I have also stood for legal marriage and against this free love and promiscuity that I have asked as the first point in these four points that



the 'companionate' relationship in lawful marriage have some legal, social and scientific direction accessible to the poor as well as the rich.

"Among domestic animals we find the only real respect for the marriage-sex rule that the reactionary clergy is trying to impose upon a free people. These domestic animals in their sex relationships follow the church rule explicitly, and it is the only place where it is followed—but nature is responsible for that. There is no relation of the sexes among domestic animals during any time except the mating time and this solely the 'procreative.'

"But among human beings we find in all churches a determined refusal to be placed on a level with the beasts. More and more they are resenting the 'racketeer' efforts of a reactionary clergy to force upon them this barnyard morality. The sex relations of human beings in lawful marriage are two-fold—(1) the 'companionate' and (2) the 'procreative.' The companionate is the sex relationship that, even though forbidden by some churches and the state law, is indulged in by a majority of all the couples legally married by any priest, preacher, rabbi or judge. It is for the healthful, happy satisfaction of lovers in the embrace of lovers, without the intention to beget children.

"Certain churches force on people a tragic, unnatural struggle to guarantee the 'companionate' against unwanted pregnancies or the unwanted 'procreative.' This does not mean that a 'companionate' married couple practising the 'companionate' sex relationship should not have children, but it does mean that they should not have them until they want them. For reasons of health, economy or other causes, people often feel they are not prepared to undertake the second relationship of the sexes, the 'procreative,' for the begetting of children or the family.

"I pointed out in our book *The Companionate Marriage* sent to Bishop Manning, that he undoubtedly had every access to, that when the 'companionate' relationship had been legalized in a country like Holland, marriage increased; and that meant an increase of homes and children—perhaps not ten children in a family, but at least some children *in lawful marriage*. I pointed out in that book, as I point out now, that there are ten million men in this country, according to the last published census, between the ages of twenty and

thirty, and less than four million of them are married until after they are thirty. I insisted there and I insist here that one reason for this failure of a normal and healthful increase in marriage in proportion to the increase in population, and this dangerous condition as to both health and morals, is due to our failure to educate youth and to make accessible to the married, and those contemplating marriage, the best information to be had on this subject. It may not be one hundred per cent, but it should be the best there is.

"I contended in that book, and I contend here, that it should and would have the effect of relieving people of the psychic fears of inability to support a family because of economic conditions, and thus encourage marriage.

"Thus I claimed and still claim that it would result in an increase—so much desired—of marriage among our younger population. Unless we did this, I contended and contend, that those who are responsible for opposing these changes are contributing to the increase of so-called free love, promiscuity, and licentiousness outside of marriage, a condition that any reasonable man must know is bound to continue until the reactionary clergy of this country shall yield to education, legislation and the social and scientific control and direction of the habits and customs of modern marriage, that this type of clergy can no more successfully interfere with or prevent than they can stay the comets or the tides in their courses. The only effect of their opposition is to add to the unhappiness, torture, misery, immorality and crime that is already going on. They offer no scientific or other practical remedy to prevent it.

## TWO

"The second point of the programme of 'The Companionate Marriage' explained over and over again in our book and my letter to Bishop Manning was that from my own experience in a domestic relations court (and it is generally known among judges and lawyers) it is a habit and custom in America for discordant couples to go to lawyers' offices and arrange a divorce through mutual consent.

"This is generally through subterfuge and some kind of collusion, for all practical purposes, and in substance at

least, this amounts to a divorce by mutual consent. And divorces by the modern art of collusion, subterfuge and fraud are put through the courts by the tens of thousands and they are in spirit and in fact in violation of the law—whether we believe in the law or not—and are just as false and lacking in scientific direction as the effort by birth control to guarantee the ‘companionate’ sex relationship in lawful marriage against the ‘procreative.’ I tried to point out in that book and to Bishop Manning that these are actual facts, and not theories; that these are actual conditions of the twentieth century and not the first century. That they are causing an unnecessary increase in divorce and are beginning to have a devastating effect on the institution of marriage. I also pointed out that the ecclesiastical reactionaries like Bishop Manning did not propose anything practical to meet this actual condition.

“Without claiming any panacea or cure-all for any of these difficulties, I did suggest in that book and propose here to abolish the present bootleg collusive methods of obtaining mutual-consent divorce. I would do it by substituting for the courts and lawyers’ offices (and I mean no criticism of the judges and the lawyers, for that is only part of the system they did not make) an Institution of Human Relations, or what I have sometimes called The House of Human Welfare.

“This would consist of a commission of three experts instead of the lawyers and the judge as now. One of these I have suggested should be a psychiatrist or expert from the medical profession; another would also be an expert either from that profession or some scientific profession equal to it, and the third would be a lawyer, largely because of constitutional requirements, to make it a legal court.

“I added the suggestion that this lawyer should be especially trained in psychology and biology as well as law. For I know too well that neither lawyers nor judges are as a rule equipped by training or education to hear these cases.

“This commission would hear all marital discords and after a reasonable time during which to attempt reconciliation of the couple, they would, I believe, succeed in at least one-third of the cases. If there were no children and that effort failed, there could be an honest divorce for incompatibility by mutual consent. This would be the substitute

for the present mutual-consent dishonest divorce, an unnecessary hardship now going on in this country. And it is going on under the laws and customs that have grown up under the rule of the reactionary element of the clergy. They have, largely through the intimidation of cowardly politicians, done most to maintain this intolerable, scandalous situation. It has no place in the sex affairs of people living to-day.

"I pointed out that under this point two of the programme of 'The Companionate Marriage' if there were children and the effort at reconciliation failed, the man should be required to support the children in the custody of the mother. If the man could not be made to support them, then the state should do it for the mother. I have not only proposed this plan in my own state of Colorado, but put a large part of it into effect.

"Under that law to-day hundreds of thousands of dollars annually are being paid for the benefit of children in the custody of their mothers. I had the honour to write practically all of these laws, and with the help of good friends, to get them through the legislature or adopted when referred to the people of our state; and without boasting, but in my own defence, I am willing to match my own activities for the motherhood and childhood of this country against anything Bishop Manning has done or proposes to do. I believe I am prepared to show that whatever I have done adds to their happiness and that the doctrine advocated by Bishop Manning is contributing (without his intending it, of course) not only to what is called 'free love,' but also to mental and physical torture, and the unnecessary butchery of women and murder of millions of children.

"A racket is a threat—an intimidation—to force one to bend to the will of a tyrant or one who thinks he is—or suffer the consequences of destruction. I warn the reactionary element of Bishop Manning's clergy, and any other clergy, that in the light of modern times if they persist in their sixteenth century doctrine of coercive marriage under threats of hell and damnation and suffering in this world or the next, their activity may become one of the most scandalous rackets of our time! I charge that directly or indirectly, whether intended or not, it is causing butchery, murder and other crimes. Of course this is not intended by its advocates,

but nevertheless the savagery of ignorance or superstition may be just as dangerous as the deliberate use of coercion and violence by racketeers who are now regarded as enemies of society.

"I point out in my book how a commission, along the lines I have proposed, for the granting of divorce by mutual consent, has already proved a success in Scandinavian countries, where divorce is from eight to ten times less than in this country. Of course in these matters I do not attempt to give all the details, but only the principles involved.

"I am one of those who would gladly see a state of marriage where two people might live happily together until death do them part—if they wanted it that way. But when the reactionary element of the clergy, led by well meaning men like Bishop Manning, insist on bringing about that kind of marriage through coercion, censorship, prohibition, tyranny and force, they are going to fail, as the facts show they are failing. The tragedy of it all is that unwittingly they are going to contribute to affairs out of marriage, to promiscuity and what they call free love. I happen to know this is true from my actual experiences with thousands upon thousands of domestic relations cases. This is what I wanted to explain to the Churchmen's Association so that they would not knowingly contribute to the terrible situation, as I am sure they have no intention of doing, any more than Bishop Manning has.

## C

### THE BISHOP'S "LAW OF GOD"

BISHOP MANNING, I understand, claims that it is the Law of God that there should be no divorce except on the one ground of adultery.<sup>1</sup> He says that it is not debatable, any

<sup>1</sup> How strange it is that Bishop Manning's insistence upon strict compliance with the "Word of God" or the "Law of God," "Whosoever shall put away his wife and marry another committeth adultery against her," should not call for the same zeal to enforce literally as, "Sell all thou hast and give it to the poor," "Give to him that asketh thee, and from him that would borrow of thee turn not away," "If any man will sue thee at law, and take away thy coat, let him have thy cloak also," "If thine eye offend

more than the axioms of mathematics. I deny the right of Bishop Manning or any other cleric to tell the people what the Laws of God are. Generally they have demonstrated that they do not know everything about the laws of Gods. Are the states of this Union mistaken when they have so decreed it? Forty-six of them have repealed what Bishop Manning calls the Law of God. They allow divorce on other grounds than adultery. And Professor Einstein has taught us that even the axioms of mathematics *are* debatable.

"Bishop Manning is also in strange disagreement with the disciples of the man he calls the son of God. Those who wrote the gospels and reports of what Jesus said have very seriously disagreed among themselves as to His rule about marriage and divorce.

"In the Gospel of Mark, believed, I understand, to be the most reliable of the reporters, it is reported that Jesus said, 'Whosoever shall put away his wife and marry another committeth adultery against her.' (Mark 10-11.) Another evangelist reporter, who I understand is believed to have been not so favourably situated to get the facts, reports an entirely different version. He says, 'Whoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and who so marrieth her which is put away doth commit adultery.' (Matt. 19-9.) But the strange doctrine of Bishop Manning is that you can't even debate what these so-called disciples of God not only debated, but as to which even they were in serious disagreement.

"And so Bishop Manning says that there should be no divorce except possibly in case of adultery, I understand, however, that this doctrine is that even when a divorce was granted on that ground, neither of the parties had any right to get married again without committing the 'sin' of adultery; or, in one modification, that only the innocent party could get married again to escape the racket consequences threatened against them. . . .<sup>1</sup>

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thee, pluck it out," "If thine enemy smite thee on thy right cheek, turn to him the other also."

Is it because he knows if he was thus consistent that his rich and powerful congregation would soon end his reign as the lordly bishop of its mighty cathedral.

<sup>1</sup> And what of that "Word of God," or "Law of God"—"Whosoever looketh on a woman to lust after her hath committed adultery with her already in his own heart." The bishop's doctrine is that this so-called

"In or about the sixteenth century, or the Middle Ages when the church was supreme, there wasn't a divorce in all of Europe for three hundred years. It was an ideal marriage condition from the standpoint of the reactionary clergy. Mr. Lecky in his *History of European Morals* tells us it was that very period when civilization wallowed through the most immoral, dissolute and degenerate times of its history. In South American countries and some European countries where the church ideal exists with no divorce allowed because of the so-called laws of God, there is more illegitimacy, immorality, free love and promiscuity than in any state of this Union where divorces are most plentiful. It is perfectly absurd to say that divorce is wholly an evil. It is often a safety valve and contributes to morality rather than immorality, to the make-up of homes rather than to the break-up of homes.

"I have a couple in mind who, five or six years ago, were utterly miserable and incompatible. A scientific approach to their case disclosed that they ought to have a divorce by mutual consent. They got it in the usual underhand way. I met both of these people recently, happily married, with two children each, so that out of one divorce of a couple who had been utterly miserable and utterly childless, we got two happy homes and four happy children.

"Word of God" is a divine command to male continence and chastity. In other words, that there can be no relation of the sexes even in lawful marriage, without "sin" and its "racket" threat of hell and damnation, if there is interference with this purpose to beget a child. And even *then* it is so sinful that the poor child is "conceived in sin and born in iniquity."

The "sin" must be washed away by the church baptismal ceremonies. If not, then so much the worse for the innocent child. It is condemned to hell or "outer darkness" and if hell is *not* "paved with the skulls" of these sinful, unbaptized little innocents—at least "they shall never see God." Oh, superstition and savagery, what crimes, even against innocent children, are committed in thy name!

(His Holiness the Pope has recently quoted St. Augustine as announcing, that for any such deviation, a man "maketh of his wife a harlot.") If this is the "Law of God"—"to be obeyed and not debated," as Bishop Manning puts it—then I ask him how many "bad" women and "adulterous" men there were in his congregation that Sunday morning who hissed and struck at me as they threw me out of the cathedral. And how many wives were there present who had a right to divorce on the ground of adultery. And if they all exercised their rights to divorce on the ground of adultery, how many respectable couples would the bishop have left in his fashionable congregation. No wonder His Holiness the Pope has just recently announced that divorce should not be permitted even on the ground of adultery.

"In another case, which is quite typical, where a couple had gone to a lawyer's office and arranged to have a divorce by mutual consent, I succeeded in getting them to come to a psychiatrist with me, and it was soon disclosed that one of them was suffering from a complex, and relieved of that, several years afterward I met them, not divorced, but living happily together, with a lovely child to bless their union.

"For it must be remembered that 'The Companionate Marriage' does not mean a childless marriage. It only means that people may live in the 'companionate' relation without enforced celibacy or continence until they are ready to have their child or children. They will then be much healthier, happier and more efficient to care for children as well as for themselves and the child will have a better chance in life. My experience is that most marriages, beginning with the 'companionate,' as I believe most of them do, even though performed by Bishop Manning and the clergy of all the churches, generally wind up with the 'procreative' of the family. I would rather that we have more marriages even if we have more divorces than the present morally and physically unhealthy situation of the great majority of marriageable people unmarried until after thirty years of age.

"In proportion to the increase of population we have a decreased marriage rate and an increased divorce rate, in most of our large cities. It has already reached the point where it is dangerously near becoming fifty-fifty, that is, with as many divorce and separation cases as marriage licenses granted each year in many cities and many states. This is a shameful condition even as compared to that which exists in many of the cities in Russia. I do not favour the Russian system, but it has the virtue of honesty, while ours wallows in all the evils of dishonesty and hypocrisy.

### THREE

"The third point in this programme of 'The Companionate Marriage' also relates to the legalization and scientific direction of habits and customs of our people in and out of marriage. I have pointed out the pathetic struggle for the truth about sex in life. I insisted in my book and insist now



that marriage is an art, and as such it calls for the finest kind of education. To this end, as a part of this programme, thus labelled 'The Companionate Marriage,' I have advocated that the state, through its schools and universities, should deliberately undertake the education of youth and married people in the art of marriage and domestic relations. I would have this include a more comprehensive scheme of education than is now available, concerning the art of love and the laws of sex and life, and the care of and responsibility of children. This preparation for marriage is a promise for more permanence and happiness in marriage. Such education should begin not later than the age of two years. Uncontrolled and uncorrected temper tantrums of a small child are a part of the foundation for unsuccessful marriages. Important literature on the relationship of the sexes is now so barred and banned by prohibitive censorship laws that the habit and custom is to get it through bootleg sources, and as in the case of the first two points, bootlegging in birth control and bootlegging in divorce, it must generally be had by bootlegging in books. This applies to books that are admittedly wholesome and decent where minds are also wholesome and decent.

#### FOUR

"I think a good rule was established in ancient times when economically women were not allowed to compete with men. It was then provided that the man must support his wife under practically any and all conditions. These arbitrary laws still exist in many if not most of our states. They have no place in these days of economic competition of men and women in all branches of activity and endeavour. I have known over and over again the perfectly absurd situation in the courts of our western states where the man, earning \$100 a month, is paying the woman \$50 and she is earning \$150 a month in some occupation, with the result that she is making \$200 a month, and he is making \$50.

"Of course, he can't get married again, and she won't. The encouragement in this system given to gold diggers and breach of promise suits should be done away with by the commission which I have suggested to supplant the divorce courts. It would have the right to settle all matters

of alimony and support and controversies over sex affairs with reference to the economic status and facts of each case. If the man cannot be made to support his children for any reason, then I contend that since the state can take the children at the tender age of sixteen and eighteen as nurse or soldier, when the state is imperilled by war or other danger, then it should be reciprocal and when the child is imperilled by any cause, it should in proper cases support the child in the custody of the mother. Already, in part, we are doing that in Colorado, under the laws I have written. . . ."

## D

## THE POLITICAL "DISBARMENT" EXILE

Now as to the bishop's charge that I am a disbarred lawyer—~~for~~ for "professional misconduct." I am glad that the issue has been thus publicly raised that I may now clear up for all time any doubt in the minds of fair-minded people as to my personal integrity. I propose to meet the issue squarely and to prove the bishop and the now defeated former Chief Justice of the Colorado Supreme Court, whom he quotes, to be falsifiers.

First, let me indulge in a few pertinent general observations.

In the minds of those who have followed my battles in Colorado in connection with the upbuilding of the Denver Juvenile and Family Relations Court it is not Ben B. Lindsey but the state itself that suffered "disgrace" through those disbarment proceedings. These friends throughout the nation knew the terrific force of the enmities roused by the endless conflicts with the reactionaries of church, bar and the big business and political worlds. They withheld judgment until they had the facts and the facts satisfied them, that I had not been guilty of "misconduct," professional or otherwise.

"The recent disbarment proceedings," says the Rev. A. A. Heist, pastor of Grace Community Methodist Church, Denver, of which I am a member, "have brought disgrace not to 'Little Ben,' known the world over, but to all who have had any part in the proceedings—most of all the members of the Colorado Bar Association. All Colorado must feel the

sting of world opinion until its citizens have an opportunity to bestow new and fitting honours upon the commonwealth's most honoured citizen. Meanwhile, we must recognize that the old 'Beast' is responsible for the present situation and we must mark the servants of that 'Beast.'"

In the same trend writes Boyd Gurley, editor of the *Indianapolis Times*, whose former management of a leading Denver newspaper threw him into close contact with the Colorado city's politics:

"The Beast wanted Lindsey. Now it has got him. He has been disbarred from the practice of law. That will mean nothing, perhaps, to the man whose clients would be too poor to pay and who has given through the years the most of his earnings to the unfortunates who came before his court, to the education of the boys and girls who would otherwise have been denied a chance. . . . But it does mean something to the nation and to decency. It is not a cheerful prospect for any young man or woman who may be inspired to devote their lives to popular causes."

Says George Creel, widely known author and former editor of the *Denver Rocky Mountain News*, writing in the *San Francisco News* prior to my victory in California:

"Having first robbed him of the office as judge of the Juvenile Court of Denver, the Supreme Court of Colorado set deliberately to work to rob Ben Lindsey of the right to make a living in every other state and California is expected to inaugurate this savage drive against a man WHOSE ONE CRIME IS THAT HE CHOSE TO FIGHT FOR THE UNHAPPY AND HELPLESS OF THE WORLD INSTEAD OF PURRING AT THE LEGS OF WEALTH AND POWER."

The *Record*, Los Angeles, California, in a series of articles on my work has this to say:

"Tragedies in public life are all about us—the tragedies of men who have deserted the high causes to which they once proclaimed undying allegiance; of men who have grown fat of purse while spirit and intelligence have flickered out in smothering compromise; of men who have grasped at and won world power to enmesh themselves in final slavery, destroying the last vestige of their integrity and self-respect. We look at such men and we compare them with Denver's Little Ben, clear-eyed, unapologetic, with a broader faith in life than when he started his battle in Colorado forty years

ago; with a genuine culture garnered out of long service for men, women and children; with friendly and understanding contacts with the really worth-while and great spirits of his age; and we feel like shouting to the world that there is no tragedy here. The recent disbarment in Denver is tragic, not to Judge Ben B. Lindsey, but everlastingly, unforgettably, to the state of Colorado and its supreme court."

In much the same friendly mood have *The Nation*, *The New Republic*, the *Survey Graphic* and other journals viewed the Colorado supreme court's attack upon me and I have been reminded literally by thousands of understanding men and women over the nation, both by letter and word of mouth, that they regard the disbarment as evidence of Colorado's "crooked politics" and of nothing else.

Now I do not write these words under the influence of vainglory. I write them that the bishop, the defeated former Chief Justice Whitford and their reactionary allies of church and bar may have it brought home to them that the people of America in rapidly increasing numbers are distrustful of their pronouncements and in revolt against their stupid decrees. I want them to know that their word no longer passes unchallenged; that the burden of proof is upon them to-day and, without that proof, all their assumptions of leadership are but futile, farcical gestures. Indeed, I hardly need acquaint former Chief Justice Whitford of that fact, for in the election of November 4, 1930, he paid the price of his lifelong hostility to the people's interests, including his part in my disbarment, in the decisive defeat administered to him by our people in his campaign for re-election.

The view of my disbarment that I find widespread in the country is justified by a critical examination of the facts and records upon which Whitford and his associates based their action. All of these facts and records were before the board of governors of the California state bar when it decided February 21, 1930, to accept the recommendations of its disciplinary committee, Alfred L. Bartlett, Leonard B. Slosson and Henry G. Bodkin.

What did the board of governors of the California state bar find? With the same evidence before it as was before the Colorado supreme court did it conclude that I had been guilty of "professional misconduct" and should be deprived of the right to practise law?

It did not.

When the fateful session of the board of governors recessed and newspaper representatives crowded around Attorney Charles Beardsley, president of the state bar, in the state building, Los Angeles, he gave out the following concise but comprehensive statement in his own handwriting:

"The state bar's examination has failed to disclose that there was any irregularity in connection with Judge Ben B. Lindsey's admission to the California bar.

"Apparently there was a disclosure made by Judge Lindsey to the board of bar examiners in reference to the charges then pending in Colorado.

"For these reasons the board of governors has to-day decided that the facts do not justify it in asking the supreme court of California to set aside its order admitting Judge Lindsey *or in taking any other action in reference to the matter.*" (Italics mine.)

Especially is the attention of the worthy bishop called to the concluding words, "or in taking any other action in reference to the matter."

If they mean anything at all, they mean that the state bar of California, after looking into every angle of the case, had found me NOT GUILTY of the "professional misconduct" which the irate bishop and the defeated Whitford charged.

For the information of my traducers, let me say that there were two principal reasons why I was accorded justice in the state of California.

First, the bar's board of governors and its disciplinary committee were composed of capable and *disinterested* members. Removed from the passion and prejudice of Colorado politics, they were able to give me a fair hearing. It is particularly important for Bishop Manning and his devoted followers to bear in mind that the gentlemen who judged me were not disciples of mine. They were leading lawyers of the California bar and, I am informed from reliable sources, in the main stalwart, American conservatives. In finding me, in effect, NOT GUILTY of "professional misconduct" they were not passing on the ideals and causes for which I have laboured and fought—they were passing on the only issue before them, the integrity of my conduct in California and in Colorado.

Second, I was fortunate in being able to interest the courageous William Gibbs McAdoo, of Los Angeles, former

secretary of the United States Treasury, and to retain as counsel his efficiently organized legal firm, McAdoo, Neblett & Clagett. I want here to pay my respects to Attorney William H. Neblett, who assumed active direction of my case. With a dogged persistence this brilliant lawyer encompassed every phase of the legal battles that led to my disbarment and, with his mastery of the facts and the law, was able to establish beyond question the absurd inconsistencies of the Colorado Supreme Court's position.

## E

## THE BATTLE AGAINST BIGOTRY

BUT before we set forth Attorney Neblett's contribution to the case in hand, let us supply the amazing background of recent Colorado history.

I pass by my many battles with the political and "corporation" corruptionists of the Rocky Mountain state—my resistance to the thievery of printing deals, the iniquities of the ballot-box stuffers, the stealing of franchises under cover of the law, the typical instances of misrule that have marked the rise of the financial and industrial oligarchy in America. I pause at the year, 1924.

In that year the night-shirts, bed sheets and pillow slips were at the high tide of their power in Colorado. I refer, of course, to the Ku Klux Klan and the reign of terrorism it inaugurated in a democratic commonwealth. Flaming crosses up and down the state. At Table Mountain, not far from Denver, tumultuous outpourings of hooded "knights," weird rites and incantations that harked back to the voodooism of primitive savagery, the road jammed and clogged every Monday night with automobiles filled with hating zealots in fantastic regalia.

Negroes run out of town, Jewish merchants boycotted, Catholics in fear of their lives. Beatings, kidnappings, tar and feathers—all the vicious instrumentalities of mob "justice."

Everywhere lies and suspicions, lifelong friends become enemies over night, until toward the end the orderly processes of civil government broke down and stark anarchy loomed as the inevitable climax.

I saw with my own eyes what "fundamentalism" and its exquisite flower, the klan, brought to my own state and I want no more of it anywhere in America. And may I remind the Catholic clergy, some of whom are now so active in my persecution, that I stand to-day exactly where I stood in 1924 and the years before, in unbending opposition to the bigotry that violated their civil rights or the civil rights of any other religious minority.

The most outrageous feature of the klan campaign was the abuse directed against the relations of Catholic priests and nuns. In filthy innuendoes and direct charges they were pictured as licentious and immoral and the confessional itself assailed as an institution for the corruption of young girls. The House of the Good Shepherd, a Catholic institution to which I had sent girls, in line with the wishes of their parents, was characterized by one of the lunatic-fringe klan orators as just a blind for the sex improprieties of a celibate Catholic clergy. An alleged "ex-nun" was imported into the community and given the platform in fundamentalist Protestant churches to ring all the changes on these age-old slanders. No diseased, degenerate mind could have conceived anything more despicable than the vilification to which the Catholic church and its institutional life were subjected.

The poison got into the public schools. Catholic and Jewish boys and girls were set upon and badgered by Protestant children. Young Catholic girls were slighted and ostracized by their former playmates and friends, taunted and jeered as "immoral" because they went to the confessional. In accounting for his lawless conduct, one youth, I remember, explained with great pride that he was one of the "Juniors."

"Junior what?" I asked.

"Junior K. K. K.," he quickly replied. "We are out to clean up the Micks and the Sheenies."

Mothers of abused Catholic and Jewish children in one school insisted, I remember, that they could get no satisfaction out of principal or superintendent, who treated their complaints lightly. The klan had elected one man and one woman to the school board!

The poison got into the courts. The klan controlled a majority of the district judges of the state and found its way into the supreme court itself.

Unable to snuff out this rising power, the privilege-seeking corporations of the state made peace with it, purchasing immunity from attack by generous campaign contributions and the guaranty of the election of friends of the Power Trust as United States senators. And the klan and "Big Business" divided the political world between them. The mayor of Denver became their, as well as a Ku Klux Klan United States, senator. . . .<sup>1</sup>

I have said that in this swirl of bigotry and passion the orderly processes of civil government broke down. That is no exaggeration. In those days it was not uncommon for litigants in the courts to proclaim their membership in the klan and to make their threats about the courtroom that they would take their cases to the "grand dragon if the cases were not decided the way they ought to be." The klan oligarchy with its inquisitions had usurped the functions of government.

A youth about twenty years of age, I recall, had been accused of improper sex relations with a girl over the age of eighteen years. Now in the klan's boasted crusade for the "purity of womanhood" nothing so delighted it as to pick up and accept as proven truth irresponsible rumours of moral delinquency and to demonstrate its righteousness and power by brutal floggings and other malevolent violations of legal justice.

And so the grand dragon's agents deliberately set out to kidnap this youth. He was dragged away from his home and his mother by two klan ruffians and rushed into the austere presence of the grand dragon and his court. There he was threatened with a criminal operation unless he immediately married the girl involved in his alleged misconduct. And a klan preacher stood by to carry out the klan's mandate! The ceremony was performed.

I recall the successful efforts of the klan to prevent the legal prosecution of this high official and his aides for kidnapping. The case coming up in my court,<sup>2</sup> I found the court house corridors crowded with armed klansmen. Their guns visible from their hip pockets, they squeezed into my small courtroom, pressing close to my bench as a part of their programme of intimidation.

<sup>1</sup> He has since been defeated for re-election to that office.

<sup>2</sup> This trial followed the election of 1924.



Now in view of my outspoken attitude toward these chivalrous knights, I had not intended to try the case myself but I was determined to do what I could to obtain its transfer to a court not beholden to this organized bigotry. My efforts, however, were futile. Technicalities of clever klan lawyers shunted the case to another court where it was sent for trial to a judge of the criminal court, who had been hand picked and elected by the klan.

Not only did this judge dismiss the case but he went out of his way to express great sympathy for the grand dragon and his kidnapping pals and indirectly to roast me for my efforts to prevent the breakdown of justice.

I come now to the point that I want to press home upon Bishop Manning and his ardent supporters among the Catholic hierarchy. When the cause of religious and racial freedom was in peril from these Ku Klux Klan conspirators, the persecuted minorities—I say it with pride—found in me an ardent defender. I did not twist and turn to evade the issue. So far as I know I was the only candidate for a judgeship and one of the very few for any office in that bitter tragic campaign of 1924 who went out upon the platform and denounced the vicious fanatics and their stupid slander and vilification of sincere Christians. For years I had differed with the dogma and doctrine of the Catholic church but I had been in a position to know the purity and sweetness of the lives of both priests and sisters. The attempt to spread hatred of them through lying representations of “immorality” was as contemptible as the more recent effort to dispose of me by branding me as an apostle of “free love” who was trying to “break down the moral defences of the young.”

To emphasize my disapproval of the klan tactics I appeared on the platform at a meeting, at which a number of Catholic priests spoke, in defence of their cause.

In my own meetings I fought the klan with all the power that was in me. I boldly asserted that its members were more like sadistic savages than followers of the great teacher whom they claimed to represent. Time after time as I recalled that the noble character who had sanctified the cross that they used as their emblem of blood and fire was a Jew they would rise by the scores and even hundreds and march out of the audience. Nothing so delighted them

as to turn out the lights during my addresses and leave the halls in darkness. Over and over I faced their hisses, cat calls, shouted obscenities and threats of physical violence. With the whole state taking fire I did my best to rescue Denver from the holocaust. And what was my reward?

Well, in that November 4 election, 1924, I found my usual heavy majority so reduced that the enemy was able through an appeal to a hostile supreme court, dominated by a personal and political enemy, former Chief Justice Whitford, to turn me out.

Curiously enough, my campaign against the klan had perceptibly increased my strength among the cultured and wealthier classes—notably, for instance, on Capitol Hill—but I suffered a decided slump among the “common people” in West Denver, where I spent my early boyhood and had always been especially strong. Here the klan made big inroads with its spurious appeals for “100 per cent Americanism.” “Little Italy” and “Little Israel” in North Denver, however, stood loyally by me.

On the day following the election, the *Denver Post* announced that I had been elected by a majority of approximately 300 votes. But a contest was filed by Royal C. Graham, my unsuccessful klan opponent, alleging frauds and irregularities in a certain Jewish precinct in connection with the counting and tallying of the ballots. Among other things, a youth was induced to testify falsely that he had been employed by an officer in my court to commit frauds in this precinct. Months later this youth confessed his perjury in a signed statement, that he had been promised \$2,000 and actually paid a large part of it for his “manufactured” evidence.

The issue that presented itself to the district court was clear. On the showing of my opponent alone the court decided that I had been elected by a majority of all the honest votes cast and dismissed the case. In other words, my undisputed majorities in the Jewish precincts were recognized by the court and allowed to stand in the city-wide totals. Graham appealed to the supreme court. The majority of this court in a widely criticized decision held that inasmuch as I had offered no defence in the lower court it was to be presumed I had no defence to make. Whitford and his associates ignored the fact that the lower

court had held it was not necessary for me to make any defence because by the very showing of my klan opponent I had been honestly elected and no fraud or irregularity established against me. So neither I, nor any of my witnesses, was ever permitted to be heard before any court.

The court's decision against me was handed down Monday, January 24, 1927. On July 1, 1927, I was turned out from the court I had created.

In September, 1929, the same supreme court again struck at me by deciding I was not a judge of the juvenile court after January 13, 1925, and compelling me to pay to Graham's estate the salary amounting to several thousand dollars which I had collected during Graham's lifetime.

The indignant comment of my old friend, George Creel, is pertinent: "What did it matter that Graham had committed suicide in the face of charges of gross irregularities or that he had been holding another city and county office throughout the period in question?" (Graham had been given a "political job" pending outcome of the election contest as assistant city and county attorney for Denver.)

The Colorado Supreme Court, it will thus be observed, did their utmost in these two cases to destroy the last vestige of any right that I might claim to the office of juvenile judge after January 13, 1925. This fact should be borne in mind, for my counsel, Attorney Neblett, of Los Angeles, later used it in the California case with telling effect.

Before I pass to subsequent events it is imperative that I make clear an ironical shift in public sentiment that accompanied the court ouster.

As I have observed, it was the activities of the intolerant klan—hater of Catholics, Jews, Negroes, foreigners—that imperilled my official position in the campaign of 1924. By the beginning of 1927, however, the reactionary Catholic hierarchy had joined the movement against me. Misconceptions of my book, *The Companionate Marriage*, then the centre of controversy, were accepted and endorsed by the bigoted leaders of the religious minority whose civil rights I had defended.

The Cross and the Flaming Cross both made war upon me.

It will be remembered that the supreme court decision to turn me out, which became effective July 1, 1927, had been handed down Monday, January 24, of that same year. On

January 14—ten days before the decision—the Rev. Hugh L. McMenamin, pastor of the Catholic Cathedral of the Immaculate Conception, Denver, had publicly declared: “Now is the time to start a recall petition and let the public remove him (Lindsey) from office.” January 17, the *Denver Post* observed that “Denver’s Catholic clergy declared war on his (Lindsey’s) companionate marriage suggestions from their pulpits Sunday.” And Father McMenamin was quoted: “Only the old idea of the indissolubility of marriage will solve the (divorce) problem.”

The night before the supreme court’s decision I had addressed a somewhat tempestuous meeting at the Seventeenth Avenue Community Church, Denver, upon the Companionate Marriage and the same issues of the press that told of my ouster noted the fact in their stories of the church meeting that “intense public feeling had been aroused by certain revelations and proposals made by Judge Lindsey.”

The day after the decision to turn me out, Father McMenamin, apparently determined to end once for all the “menace of Lindseyism,” urged in the public press that the legislature “abolish the juvenile court and create a domestic relations court attached to the district court.”

The supreme court’s blow at me, it will thus be seen, was, from the viewpoint of the reactionaries, happily timed. In fact, my Denver friends acquainted with the amazing developments still insist to-day that the state’s highest tribunal would not have dared to hand down its decision had it not been for the popular prejudice aroused against me by the combined bigotry of the local Catholic Klergy and the Ku Klux Klan . . . the K. K.s and the K. K. K.s. Such is the cohesive force of intolerance and bigotry.

But I hasten on to my disbarment, about which Bishop Manning is so concerned. Once before their final successful effort, my enemies tried to take my means of livelihood from me. When I left the court July 1, 1927, I took with me the voluminous notes and personal records I had kept on the thousands of boys and girls and men and women whose problems had come before me. These papers were in large measure confidential. Their character was such that as public records they would have spread ruin and disgrace through the community. And so I had refused

to turn them over to my successor who had appointed as his chief probation officer an active member of the Ku Klux Klan.

Rumours persisted that an attempt would be made to obtain a court order compelling me to give up these precious documents. I decided to forestall any such action.

So on September 16, 1927, with the assistance of my wife and two former attaches of our court, Ruth Vincent and Josephine Roche, I emptied the papers from baskets and cartons upon the floor of my home, 1343 Ogden Street, and we tore them into strips. They were then repacked. Two days later, as the *Denver Post* observed, "a strange procession moved in five automobiles from the Lindsey home . . . on its way to the pyre," a vacant lot at West 13th Avenue and Umatilla Street.

At Washington Street the procession was held up—I had forgotten the gasoline and matches. Dashing back home and securing these, I resumed my place in the procession.

Piled in the lot, the papers were sprinkled with gasoline. I struck a match and dropped it flaming into the mass and, as I watched the records of suffering shrivel, blacken and turn to ashes, I was happy in the knowledge that the secrets of thousands of humans whom I had helped were safe forever from the public gaze or blackmail use by agents of the Ku Klux Klan.

Immediately there was condemnation from certain influential leaders of the bar. I was accused of "destroying public records." The bar association began an investigation but public sentiment was with me. The "rank and file" applauded openly and, scattered through the community, citizens of some consequence breathed more easily now that these human documents were beyond all possible reach of the Klan politicians. One of these citizens, I remember, had gotten a girl into trouble. After her confession to me, he had at first denied the charge, declaiming indignantly against blackmailers. However, when he found we were after no large sum of money for the girl he quieted down, admitted his guilt and consented to furnish the funds necessary to care for the girl in the hospital and provide for the child. Incidentally, this man's wife was, in her ignorance, one of the active figures in the movement to have me disbarred at that time!

Well, the committee of the local city bar association finally concluded I had not "destroyed public records" and the charges were dropped without ever getting to the supreme court.

## F

## THE BATTLE FOR TWO CHILDREN

My enemies waited and picked what they believed would be safer ground for urging my disbarment in the Stokes will case which Bishop Manning dragged again into the limelight in his vitriolic cathedral sermon.

The charge against me in this connection was that I had practised law and accepted an attorney's fee while holding judicial office. As a matter of fact I appeared in the case as an arbitrator, mediator and friend, and not as a lawyer, and the money I received was a gift and not a fee. But let the detailed story of the transaction speak for itself:

Helen Elwood Stokes, second wife of W. E. D. Stokes, of New York, was a Denver girl whom I had known since infancy.

In 1919, while Mrs. Stokes and her two minor children, James and Muriel, were in Denver, Stokes filed suit for divorce in New York. Mrs. Stokes, fearing an attempt to take the children from her, filed proceedings in the juvenile court of Denver, asking that they be made wards of the court.

It was so ordered.

Stokes' attorneys came to Denver and attempted to gain possession of the children. On a hearing before me in the juvenile court, custody of the children was awarded to the mother.

Mrs. Stokes also defeated her husband's suit for divorce in New York.

Stokes died in New York in May, 1926. His death left Mrs. Stokes the sole lawful guardian of the children under the laws of Colorado. *This left no controversial matter in the case pending in any of the courts of Colorado.*

On the death of their father Mrs. Stokes took the two children to New York for the funeral. While she was there

Stokes' will was filed for probate. The will disinherited the two children of Helen Elwood Stokes and left virtually the entire estate to W. E. D. Stokes, Jr., his son by another wife.

Greatly concerned over the interests of her children Mrs. Stokes repeatedly appealed to me as an old friend to come to New York and enlist my services in their cause.

I yielded to her request but steadfastly declined to accept the proffered general guardianship of the children, which would have entitled me to a large fee in the event of a settlement of the contest of the will which Mrs. Stokes proposed to bring in the courts of New York City.

The comment of my friend, Creel, is again to the point:

"Had he (Judge Lindsey) been their (the children's) guardian, as the mother begged, his fees would have run well above \$100,000 and not a voice could have been lifted against him."

Creel observes that the American Bar Association specifically allows a judge to hold the post of guardian and to receive the legal fees for it.

When Mrs. Stokes returned from New York, June 23, 1926, she filed a petition through her attorney, Victor Miller, in the county court of Denver for guardianship of the estate of her minor children.

*In view of the misrepresentations circulated either maliciously or ignorantly against me, it is important to note here that this county court was presided over by Judge George Luxford and not by Judge Lindsey of the juvenile court.*

The county court granted Mrs. Stokes' petition June 25, 1926. Its order empowered the guardian, Mrs. Stokes, to employ counsel or other persons and to make agreements for their compensation, SUBJECT TO THE APPROVAL OF THE COUNTY COURT. (This qualification is important, as we shall presently see.)

Samuel Untermyer, of New York City, Mrs. Stokes' attorney, was attempting, back in New York, to reach a settlement with W. E. D. Stokes, Jr., to avoid a contest of the will in the courts.

I returned to New York. As Mrs. Stokes' friend and mediator, and with the consent and approval of all concerned, I took an active part in the negotiations in New York City for a settlement with W. E. D. Stokes, Jr.

Now, what was the character of my services?

Attorney Samuel Untermeyer says in a deposition dated July 25, 1929, that in the course of the negotiations regarding the will he "had numerous interviews with Mrs. Stokes and Judge Lindsey, who was advising her as a friend and not as a lawyer."

"At no time," the deposition continues, "did he hold any professional relation to the transaction but he was most helpful. Having known Mrs. Stokes since childhood and being a lifelong friend of the family, I induced him to see Mr. Mitchell (of counsel for W. E. D. Stokes, Jr.) on a number of occasions during his stay in New York.

"But at no time did we discuss or refer to any questions involving his retainer or of any payment whatever being made to him in connection with what he was doing.

"I understood that he was throughout acting solely as a friend.

"All the legal work in connection with the prosecution of the contest was done by me and my office. . . . Respondent, Ben B. Lindsey, had nothing whatever to do with the legal work and only incidentally with the negotiations, because of his relations with Mrs. Stokes and the children."

The negotiations with W. E. D. Stokes, Jr., were successful. A settlement was reached in July or early in August, 1926, by which Mrs. Stokes' minor children, instead of being disinherited, were awarded one-third of the Stokes fortune of a value of between two and three million dollars.

Three months later Mrs. Stokes made me her personal gift of \$37,500 for investment toward a life pension of \$200 a month. A month later, in December, 1926, I received a gift of \$10,000 from Samuel Untermeyer (used toward the same purpose) in recognition of the friendly aid I had rendered as mediator in New York City in the negotiations for a settlement of the Stokes will contested in New York City.

It is well to note here, as my friend, Creel, observed, that the service I had given as a friend "was wholly dissociated" from my judicial duties "for the Stokes will case was without connection with the Denver juvenile court." It was in a court in New York City.

Mrs. Stokes' \$37,500 gift was formally approved in an order by Judge A. Luxford, of the county court of Denver, who was also fully apprised of Mr. Untermeyer's part in it, which also met with his cordial approval.



In the subsequent disbarment proceedings before the Colorado bar committee one of the questions I put to Judge Luxford was:

"Judge, in our conversations a number of times, do you recall or not if I asked you if, in your judgment, it was perfectly proper, if she (Mrs. Stokes) wanted to make that to me as a gift, it would be all right for me to accept it?"

"Yes," he answered, "that was brought up a number of times in the conversations which were had."

"And you told me," I continued, "that you thought it would be perfectly all right, perfectly proper, no one could make any objection to it, and the people ought to be glad she did it?"

"That is exactly what I said," Judge Luxford replied.

Before the same bar committee Victor Miller, Mrs. Stokes' Denver attorney, testified that the \$37,500 was a gift and not a fee.

These disbarment proceedings, at the start, were of a rather perfunctory nature. Judge Luxford and Attorney Miller having testified, the committee told me no further testimony was needed. I was informed that if more were desired I would be notified.

Later I received word that the matter had been dropped..

Then, without warning, in June, 1928, the bar association filed a petition with the Colorado Supreme Court recommending disbarment.

I filed an answer denying the charges.

The attorney general, moving for judgment on the pleadings alleged not only that I had been Mrs. Stokes' lawyer but that I had been guilty of "witchcraft" in compelling her to employ me!

The accusations were denounced as falsehoods by Mrs. Stokes<sup>1</sup> and her mother, who had been present at every interview, by Attorney Untermeyer, Attorney Miller (who is also the brother of Mrs. Stokes) and Judge Luxford.

<sup>1</sup> Bishop Manning's scornful references in press and pulpit to this good mother as "that divorced woman," in order to add to the obloquy intended for me and his rebellious clergy, is added proof of his reckless disregard for truth when he is out for revenge against those who oppose him. Mrs. Stokes is not and never was a divorced woman. She is a member of St. John's Episcopal Church in Denver, where her children also are confirmed Episcopalians.

I demanded a hearing before an impartial referee, with the right to testify and to summon other witnesses to disprove all of these charges and others falsely assumed to be true by the prejudiced Whitford in his opinion. The demand was refused.<sup>1</sup>

\*The limitations of this book make it impossible fully to present the unquestioned proof of all the political and other infamy connected with this political disbarment case.

For example, the false impression in Whitford's opinion that the parties on both sides had not consented to my acting in the capacity that I did. Mr. Mitchell, the attorney "for the other side," had personally urged me to remain in New York as a sort of mediator and helper for all concerned in bringing about the settlement out of court. And, of course, Mrs. Stokes and her attorney, Mr. Untermeyer, had been most urgent in that regard. Whitford's opinion, without the slightest excuse or explanation, denied us the right of a referee to prove all of these things—that, indeed, no one possibly could deny or wanted to deny.

In all honesty and frankness I presented all the facts of the gift bestowed upon me with court approval to the government income tax agents. They pointed out that while certain gifts were exempt from taxation, yet in cases, as where a bank cashier received a Christmas gift from his bank, he has to pay a tax upon it. This, it was explained, was on the theory that while the voluntary donation was a gift as to the recipient, it was yet made to one who had nevertheless rendered to the donor some valuable service, as in my case, even though no charge was made for it. So I refused to contest their ruling, just or unjust, and paid the tax. Though I was utterly innocent in thus willingly paying it, as could easily have been explained, had the chance been given, it was still in no way inconsistent with its being a gift, yet Whitford's opinion makes false and malicious use of the circumstances against me.

And the circumstances that, had a referee been allowed me in order to present my witnesses and evidence, eminent members of the Denver bar were ready and glad to testify that I had done absolutely nothing that was either unprofessional or subject to honest or just criticism.

Mr. Victor Miller, the brother and attorney for Mrs. Stokes and her children, was so convinced on his own account, as their Denver attorney, and as other eminent attorneys also believed, that there was a perfectly ethical and legal right on my part, whether I asserted it or not, to compensation for this character of services in New York City, that he raised the point that even though I did not claim it, and even though what was done, as he testified on oath, as Mrs. Stokes' Denver attorney, was voluntarily done, without any demand upon my part at the time it was voluntarily promised; nevertheless he argued if I should die my executor, on behalf of my heirs or my children, if not my wife, would be compelled to file a claim against Mrs. Stokes for such services—even though I had made no claim for it.

It was for this reason he asked for a receipt in full for any such possible obligations, although the receipt also clearly explained that there was an acknowledgment of the sum by me as a gift and not as a fee—since it had never been so charged as such. Yet Whitford's opinion misrepresents this receipt, by either suppressing the real facts or denying me an opportunity through a referee to present the facts about it.

As to this case I was practically a "man without a country," even before my attempted political exile through this decision, from my state. If a neighbour falsely charges his enemy with stealing a yellow dog, he has a right to a "day in court,"—that is, to a trial before an impartial judge and

jury. In that case, under the Bill of Rights, he may challenge the jurors for "cause," and one of the causes is that a juror may be prejudiced against him, or he may have reason to believe in his prejudice, whether it is a good reason or not.

Although I knew, as it was generally known, that not only Whitford but some of his associates on the supreme court were politically or personally prejudiced against me, I had no right to challenge them. The law, unfortunately, gave me no such right. The constitution and the Bill of Rights thus did not apply to me in that case. It was thus before a prejudiced "jury" and I was utterly helpless.

Consider Whitford, who delivered the opinion quoted against me by Bishop Manning. It was publicly known that I had repeatedly criticized him in such printed pamphlets of mine as "The Rule of Plutocracy in Colorado." I had accused him of political alliance with the enemies of labour when he was accused of misuse and abuse of his judicial powers as a judge, notably in the famous injunction he issued in a striking coal miner's case from Northern Colorado—where he was not believed to have the slightest jurisdiction to do what he did, and for which he escaped the impeachment that many believed he deserved.

Other judges of this court had been criticized by me, and one of them appears in *The Beast and The Jungle*, for which the crooked corporations have never forgiven me.

And the final desperation of the situation was that I had no right to an appeal to any other court. We had attempted that in the "ouster case," where we had gone to the Supreme Court of the United States in Washington. That court was compelled to hold in line with its former rules that a public office is not "property" and the "due process" clause of the federal constitution, that in some cases permits appeals to the Supreme Court of the United States, did not apply to my case and the only effect of our struggles to appeal to the highest court in the land was thousands of dollars of expense added to the thousands that we had already paid in these battles with the "Beast." Without exception the ablest members of the Denver bar who voluntarily championed my cause advised me that there could be no appeal to the Supreme Court of the United States from the outrage to which I had been subjected by the admitted revengeful purposes of my political and personal enemies.

Some of the lawyers of the "Grievance Committee" of the Colorado Bar directing this political disbarment, also represented certain political corporations involved against me in some bitter social and political conflicts. One of the most active of these was the member of the legal firm representing Henry L. Doherty's Public Service Corporation interests in Colorado.

I had sent Doherty to jail during the trial before me of the alleged theft by Doherty's company of their franchise giving them a monopoly on their own terms to furnish gas, light and power to Denver. That scandalous affair, long after that trial, I published in our book *The Beast*.

In the recent November, 1930, political campaign in Colorado for the election of a United States senator, judges and other officers, the law partner of this active member of the grievance committee against me was the Republican candidate for United States senator. He was also the paid attorney and lobbyist for the political and corporation special interests of this same Henry L. Doherty. This same Whitford was also a candidate on this same party ticket for re-election as supreme court judge. It was Whitford, as publicly reported in the press, who went about the state telling the people that it was their "sacred duty" to vote that party ticket on which thus appeared with him this paid attorney and lobbyist of these Doherty interests. This attorney had been put on that party ticket by such alleged large expenditures of money and power as to provoke a congressional in-

My friend, Creel, throws an interesting sidelight on the story at this point. He writes in a published article:

"On my way to New York in September, 1929, I stopped off in Denver to see Judge Lindsey. In the course of the talk he mentioned that he had been approached with an offer to have the proceedings dropped entirely if he would leave Colorado and give his word not to return.

"For God's sake, take it," I begged. "Quit Denver and thank your Maker you're out of it."

"But he would not listen."

On December, 9, 1929, the Colorado Supreme Court handed down its decision disbaring me. . . .

The character of my services as a friendly arbitrator in the Stokes will case was, I think, clearly established before the Colorado bar. But, admitting for the sake of the argument that the spirit of the law and the facts were to be ignored and that very technically I was "practising law" while helping Mrs. Stokes and her children, I was still on safe ground under previous decisions of the Colorado Supreme Court itself. I return here to the work of Attorney Neblett, my

vestigation. But our people have a way of shaking off their lethargy at times and doing unexpected things. They defeated the paid attorney and lobbyist of these Doherty interests and they also defeated his running mate, Chief Justice Whitford, who wrote the opinion used by Bishop Manning disbaring me. They elected for United States senator my old school chum at Notre Dame, Edward P. Costigan, an honest man and a real statesman.

Henry L. Doherty, still smarting from the jail sentence I had given him years before, had some time before this election gloated over the opinion of his friend, Justice Whitford, disbaring me. He sent a published letter to a congressional committee about it. He did not mention in that letter how or why I sent him to jail. He did not mention the devious methods in our state by which political corporation interests have chosen some judges and other officers. But he never forgave me for sending him to jail. One of his former attorneys told me that Doherty once told him in his New York office that he was good for a large campaign contribution whenever there was a chance to defeat me in any campaign.

This is also the same Doherty whose recently widely press-heralded alleged "one million dollar" party for his daughter in Washington was reported to be attended by high governmental officials while a bread line of the unemployed was mobilizing nearby to escape starvation.

There was also on this "Grievance Committee" (they *did* have a grievance against me with a *vengeance*) the paid attorney for one of our big coal companies that figured in the "Ludlow Massacre" of women and children in the bloody strike of 1914. For my part, and my wife's part, on behalf of these women and children in that strike, a high officer of this same company swore he would "get" me some day. I could trace similar prejudices to most of *this* bar "Grievance Committee." Their clients had concealed plenty of grievances against me.

counsel in the California disbarment case, and the cool logic which he directed at my enemies' inconsistencies.

As Attorney Neblett informed the disciplinary committee of the California bar, I had been disbarred in Colorado "for a cause which did not exist." For under the Colorado Supreme Court's decisions in the case which timed me out and in the suit of Graham's widow to recover salary, I was not a judge at all in 1926 and was therefore entitled to "practise law"!

"It appears from a study of the first two cases cited above, Attorney Neblett says in a letter to the California committee, "that Judge Lindsey's tenure of office was not even that of a *de facto* judge but was, under the express decisions in these two cases, that of a 'usurper.' In general, the law is that a *de facto* public officer or a *de facto* officer of a corporation is entitled to his salary from the time he takes office until he is turned out.

"The Colorado Supreme Court, having decided that Judge Lindsey was not entitled to his salary during the time 'he unlawfully usurped the office' and having ordered judgment against Judge Lindsey and in favour of Royal Graham for the salary paid to Judge Lindsey during this period of usurpation by him, those decisions are a judicial determination by the proper court having jurisdiction of the matter that Judge Lindsey did not even have a *de facto* status.

"Further, an examination of these cases will show that the Supreme Court of Colorado holds that Judge Graham was actually 'inducted into office (as judge of the juvenile court) on January 13, 1925' . . . and that Judge Lindsey was from that time a 'usurper.'"

Taken together these pronouncements of the Colorado Supreme Court constituted one of the most astounding examples of judicial legerdemain in history. Whether or not I was a judge depended upon the exigencies of my political enemies as they carried out their programme to "rid the state of Lindsey." At one and the same time I was ~~not~~ a judge and was deprived of the salary I had collected for long hours of toil in the juvenile court and I was a judge and was therefore not entitled to "practise law" and help save \$3,000,000 in New York City for two disinherited Denver children.

Thus, this supreme court, after holding I *was not* the judge, but a "usurper," since January 13, 1925, in order to turn me out, they later thus held that I *was* the judge in order to "disbar" me for this good act of mine *in New York City in the summer of 1926*, more than a year after they had already said I had ceased to be the judge. In short, I *was not* the judge, in order that they could turn me out, and I *was* the judge at the same time that they said I *was not* the judge, in order that they could "disbar" me.

I leave it to Bishop Manning to imagine a more absurd, outrageous and unjust situation—and to reap such comfort as he can from the inconsistencies of the defeated Whitford whom he has chosen to accept as authority.

My disbarment in Colorado was a political manoeuvre and nothing else, as I have repeatedly charged and as other influential citizens of Colorado have also freely charged, as press and people of Colorado generally believe.

I was disbarred in Colorado because of my social and political views and to satisfy the grudges of personal and political enemies. When other trumped up cases, as that of the burning of the so-called "records" had failed them, in sheer desperation they seized upon the technicalities of the Stokes case that finally furnished a convenient concealment for these real purposes.

In conclusion, may I insist that neither my Companionate Marriage programme nor my professional record has anything to fear from the closest scrutiny? Can as much be said for the recent conduct of the worthy churchmen who denounced them? I am thinking now not of Bishop Manning's attack upon me but of his deliberate attempt to throttle free speech and deny his fellow churchmen a fundamental right of American citizenship. Surely when he peremptorily demanded of the Rev. Elliot White, chairman of the programme committee of the New York Churchmen's Association, that the league's invitation to me to address it be cancelled he was on shaky ground. And his case was in no wise strengthened when he argued that "it is one thing to go to hear a man or to read his writings and it is another and a different thing to invite him as your guest and chosen speaker, and thus give your countenance and encouragement to his cause." If the effect of the Bishop's contention is not to destroy the right of an association of free men to hear

whom they please upon vital matters of public concern then I do not know what it is.

Fortunately for the good name of the Christian church the clergymen overruled the bishop by an overwhelming vote. I am reliably informed it was the largest meeting of the association within the memory of those who had attended its gatherings for a decade or more. There were seventy-seven present and voting, and all but six voted against Bishop Manning's demand that my invitation be withdrawn. In their published statement explaining their refusal to cancel my speaking engagement they say that their action was taken to uphold the principle "that it is both the right and the duty of the clergy to hear speakers on matters vitally affecting the welfare of the people to whom they are called upon to minister."

These are sane and courageous words—perhaps the most hopeful sign of recent months that the church is restive under ecclesiastical tyranny and may yet become an enlightened agency of intelligent human welfare.

In the present chapter I have tried with direct argument to dispose of Bishop Manning's assault upon my professional integrity and his claim that I am an exponent of "legalized free love" bent upon breaking down "the moral defences of the young." A more effective answer is my nearly thirty years of work in building up in Denver's Juvenile and Family Relations Court, an Institution of Human Relations whose most important aim was the restoration of the morally sick and confused to health, integrity and self-respecting citizenship. In the present volume I have tried to make plain the functioning of that institution and to suggest some of its many social implications.

So far as his place in these chapters is concerned, Bishop Manning arrived late and unexpectedly upon the scene and in consequence has made this Epilogue timely.

If he is not too uncomfortable, may I suggest that at his leisure he acquaint himself with the boys and girls, men and women—flesh-and-blood humans and lovable all—who also find a temporary home within these covers.

If he does, perhaps he will feel a little less bitter towards that other human being and brother who on Sunday morning, December 7, 1930, startled and angered the congregation,

in the Cathedral of St. John the Divine, with his demand for fair treatment, free speech and self-defence. That he escaped the honour of being burned at the stake or lynched under its twenty million dollar domes was due to the fact that he fell into the protecting arms of the police who conducted him from the savagery of the bishop's cathedral to the safety of the city jail.

And now:





## II. THE POPE TO THE RESCUE



## A

## THE POPE AND "COMPANIONATE"

I HAVE reason to believe that the recent Encyclical of the Pope, with its censorship of "The Companionate Marriage" programme, was, in part, inspired by the high powers of the Roman Catholic Church in America as a result of the publicity given by Bishop Manning of my protest and challenge to him in the Cathedral of St. John the Divine.

That challenge was regarded, by that high power, as also a challenge to all reactionary ecclesiasticism on the subject of marriage, birth control and divorce.

It was the desire of that same powerful Catholic influence, working through the City Hall in New York City, to have me given a substantial term in jail "to teach him manners, as well as a lesson, for the rumpus he has been kicking up over birth control and divorce," as one of these powerful influences in church and politics put it, having reference to the episode in the Cathedral of St. John the Divine. (This Cathedral episode was reported quite generally by the press all over this country and Europe.) This ecclesiastical and political power wished the case in the police court against me to conclude with a jail sentence. But Bishop Manning dreaded a personal appearance, and the cross examination in store for him by my attorney, Arthur Garfield Hays,<sup>1</sup> had he renewed the complaint. It had been dismissed against me because of the technical reason that it charged several offences, instead of one, under the Criminal Code.

This unexpected ending of the case was displeasing to the higher Catholic ecclesiastical powers referred to. But that power did not dare take the responsibility, put up to them by the New York City Hall, of filing a new complaint on their own account. That power in America then took

<sup>1</sup> Arthur Garfield Hays was associated with Clarence Darrow in the famous Scopes evolution trial at Dayton, Tennessee, and is noted as one of the cleverest and ablest lawyers in America —especially in cases of this kind. Mr. Samuel Untermyer did not act as my attorney but his kindly suggestions were helpful to all concerned.

a new tack. It is believed to have appealed to Rome to take advantage of a psychological situation created through the enormous publicity given by the Manning episode for legalized birth control, honest marriage and honest divorce by mutual consent under "The Companionate Marriage" programme. Something had to be done about it. This great ecclesiastical power was getting frightened at the way it was spreading.

And so the Holy Father comes to the rescue, as he says: "With an Encyclical letter<sup>1</sup> on Christian marriage in view of the present conditions, needs, errors and vices that affect the family . . . these errors have begun to spread among the faithful and are gradually gaining ground<sup>2</sup>. . . . Some men go so far as to concoct new species of unions suited as they say to the present temper of men and the times which various new forms of matrimony they presume to label."<sup>3</sup>

Why had the Pope never issued an encyclical before on the subject of birth control? Speaking generally, the only birth control tolerated by the Pope's doctrines is continence voluntarily imposed. I call this unnatural, dangerous birth control. What I call natural, scientific birth control, the Pope vigorously opposes. Coercive continence, even voluntarily imposed, for married people living together is generally a cruel, immoral, unnatural, dangerous, and detestable thing.

<sup>1</sup> Quotations from the Pope's Encyclical letter are from the *New York Times* and the *New York World* of January 9, 1931. This Encyclical bears out the belief that it was intended mostly, if not exclusively, for the United States of America.

<sup>2</sup> The Pope is well advised. It is undoubtedly true, I believe, that the great majority of Catholic couples practise the "companionate" relationship in their marriages. Also one-third to one-half of all married women seeking the aid of Birth Control Clinics in large cities claim to be of the Catholic faith.

<sup>3</sup> Newspapers in heading up their reports of the Pope's Encyclical claimed that his reference here included particularly "The Companionate Marriage" and its advocates. But it will be a shock to His Holiness to know that "Companionate Marriage" is *not* a "new species of union," as the Pope infers. It is just the kind of modern marriage that the clergy of his own church and the other churches are performing. This is because of the admitted fact that a majority of its married couples at times have sex relations deliberately interfering with the begetting of a child. This makes it the "companionate" in marriage. The term "companionate" is used as a "label" (as the Pope refers to it) for the four-point programme of "The Companionate Marriage": (1) birth control, (2) divorce by mutual consent, (3) education in the art of marriage, (4) alimony and support with reference to economic status as described in our book.

It is usually highly detrimental to mental and physical health.

It is dangerous to society because of the villainies and crimes to which it directly and indirectly contributes through its inhibitions and suppressions. It has within it the seed of social dissolution.

Thousands of people face the economic slavery or frightful hardships of poverty and disease in unwanted additions to the family. Denying to people, as the Pope wishes to deny them, access to scientific methods or measures, other than unnatural and dangerous continence, to space or limit unwanted family increase, is the *cruellest prohibition law* of our time. The Pope wishes to enforce this prohibition law in America. It is not in the interest of morality. It is rather in the interest of criminal bootlegging, tyranny, sin, immorality, butchery and other crimes.

In the interest of a wholesome morality, health and the progress and happiness of the human race I cannot too strongly condemn such prohibitions, censorshipships and coercion's no matter how sincere or well meaning may be those who propose them. That does not lessen the frightful harm to humanity of the destructive doctrines that exact such unjust toll and penalty for natural human behaviour.

The Pope's doctrine against scientific, safe and healthy birth control contains many inconsistencies. It declares the primary end of marriage is the begetting of children and making of a family. Yet it also makes a virtue of the frustration of that which is necessary to these chief purposes of marriage. Voluntary enforced continence is, not only not a sin, but held in high esteem by the church. Thus it is that, if every person getting married practised this virtue of continence as constantly in marriage, as some are commanded by the Pope's doctrines to practise it out of marriage they could put an end to the human race. For the Pope's doctrines *against* one kind of birth control that is safe and helpful to human health and happiness, frightful penalties are provided. For the Pope's doctrines *in favour* of another kind of birth control, that is devastating and destructive to human life and happiness, there are no sins or penalties whatever.

The Encyclical was boldly press-agented in America, especially with reference to birth control and divorce as

"the most important Encyclical in fifty years," getting the amazing world publicity that had been planned and deliberately sought.

Happily, it was the most important advertisement in fifty years for honest marriage, scientific birth control, and honest divorce. For that is the programme of "The Companionate Marriage."<sup>1</sup> The alarm of the Pope, added to that of Bishop Manning, at its admitted "spreading and gaining ground" also provoked His Holiness to public threats and warnings against "The Companionate Marriage" programme. There is thus forced, by His Holiness the Pope, as well as his ally, Bishop Manning, a clear-cut issue over the whole world on scientific birth control and honest marriage and divorce such as we never had before.

Thus, in part, because of my battle with the bishop has there culminated the determination of a medieval theology to impose the impossible sex doctrines of the cloistered ascetics of early centuries upon the enlightened civilization of the twentieth century.

For authority in that part of his Encyclical against such parts of "The Companionate Marriage" programme as scientific birth control and divorce, that I here undertake to answer, the Pope relies mostly on the writings of St. Augustine who lived in the fifth century. St. Augustine is also known for his intolerance. He was "the eagle of the fathers," and "a holy doctor" of Mother Church.

Not married and bound to continence in his own forbidden sex life, he demanded strict continence, except for the purpose of begetting children, in the lives of those who were married.

He had a pernicious way of urging on the world certain theological doctrines, some of which were cruel, unreasonable and unnatural.

The Pope writes: "The creator . . . when distributing marriage in Paradise said to our first parents, and through them to all future spouses: 'Increase and multiply and fill the earth.'"<sup>2</sup> "St Augustine<sup>3</sup> says, 'Marriage is for the sake of generation<sup>4</sup>. I wish,' he says, 'young girls to marry.'

<sup>1</sup> All unexpectedly Reverend Eliot White of the Episcopal Church innocently started it by mailing to me that invitation to the Churchmen's Association of New York City, which in turn fired the spectacular activities of Bishop Manning that attracted these other ecclesiastical forces, at a psychological moment, to join "The Battle of the Bishop."

And, as if some one said to him, 'Why?' he immediately adds, 'to beget children, to be the mothers of families.'" Nothing else from marriage here concerns this saint so much. He despised almost everything that made for happiness *on earth*. He believed that such things were reserved for good Roman Catholics *in heaven*.

The Pope wisely withholds some of St. Augustine's other theological doctrines from his Encyclical. But fiercer than his doctrines for continence in marriage, except when not interfering with the "procreative" relationship, were such as the following:

"The worst death of the soul is freedom to err,"—that is, to have the right to think for yourself instead of to let the Pope do it for you. St. Augustine is perhaps the most popular authority with the Popes.

To his frightful doctrine that it were "better that a man's body should be destroyed than his soul" could be added many others that are said to have furnished incitements to inquisitions, persecutions, cruelties and horrible crimes in and slaughter on earth that helped to stay the progress of the human race for a thousand years.

One of the most intolerant doctrines of St. Augustine is this: "Whoever is separated from the Catholic Church, however laudably he thinks he is living, yet for that crime alone, that he is severed from Christ's unity; he shall not have life, but the wrath of God abideth in him."<sup>3</sup>

Any one guilty of this heinous crime, far worse than the sin of incontinence, by St. Augustine's doctrine, is damned to hell for all eternity. Over and over again, in his Encyclical, the Pope hails St. Augustine as "the most learned," "the most holy doctor," "the stern words of the Bishop of Hippo in denouncing those wicked parents who seek to remain childless." St. Augustine was this same "stern Bishop of Hippo" in Africa in the fifth century. He did most to establish this theologian's theory that it was a wicked sin

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<sup>3</sup> This note of rank fundamentalism of the Holy Father will receive about the same respect from intelligent people as a wise child would give a parental command from Santa Claus on the accepted theory that there ever was such a person.

<sup>4</sup> Here he quotes several apostles.

<sup>5</sup> It is now often called "*the procreative*."

<sup>6</sup> *An Hour of Christianity*, by Llewelyn Powys. (J. B. Lippincott Co., Philadelphia, Pennsylvania, U.S.A.)



for any purpose to interfere with the begetting of children in the relations of the sexes and on such authority the Pope in his Encyclical against birth control assures us that children "are begotten not for the earth and time but for heaven and eternity."

Surely the virtue of consistency should apply to the Holy Father's doctrines on morals, marriage and birth control.

Thus by St. Augustine's doctrines against birth control, it is not true that children are "begotten not for the earth and time but for heaven and eternity." At least not those who are "separated from the Catholic Church." "However laudably *they* are living . . . for *that crime alone* . . . there abideth in *them* . . . the frightful wrath of God" and *they* are begotten for eternity in hell.

And the Holy Father objects to scientific birth control even if it is employed to spare the earth the hopeless idiots and pitiful monsters of nature's sad deformities. His Holiness says that they, too, in this earthly temporary disguise, are future angels passing this way to heaven and eternity.

In pardonable good humour and with all respect, may I point out that if such idiots were also born Catholics as well, being idiots and therefore without responsibility, *they could not* "separate from the Catholic Church." *They* would then be the only people, that for *certainly*, church on earth or heaven in eternity could claim? If, normal minded or *freed* from idiocy, they challenged St. Augustine's theology, as for example that of "separating from the Catholic Church," what would happen? Let St. Augustine answer. "The worst death of the soul" is in this "freedom to err" so frightfully. Thus *these* innocent, intelligent little children would be begotten not for the sweetness of earth but for eternity in hell. If such theology may make heaven idiotic and hell intelligent, how shall we estimate the peril of its promise for humanity?

This unreasonable theology of another age has been with such a shock to the intelligence by people of all denominations that it is of value beyond estimate to the cause of scientific birth control, honest marriage, honest divorce and the whole "Companionate Marriage" programme. Intelligent, unafraid people, in this twentieth century, will revolt against

this tyranny of the fifth or of the sixteenth century in thus trying to force upon them some of its theological dogmas as to marriage and morals and as to sex and "sin."

A brilliant young Catholic graduate of a well-known Catholic university has just said to me: "I am done. Those doctrines of the Pope about birth control and divorce seem to be the limit. I don't see how anyone with a grain of sense or courage is going to stand for it."

From nearly thirty years' experience in a domestic relations court I have not the slightest doubt that the majority of the intelligent Catholic laity practise birth control. And I also know that many of them do not really assent to the church doctrines about divorce. They feel that such rules are out of the dead past and contribute to immorality instead of morality, as my experiences in and out of a domestic relations court prove they do. They will have less respect now for an ecclesiasticism that offends its common sense with a proclaimed rule, "that the husband who hath relations with his wife, when intended to interfere with the begetting of a child, hath made of her a harlot."

Unfortunately it is still the frightened ignorant and the poor who will, from this alliance of such views as those of Bishop Manning and the Pope, be deeper sunk in bondage to the "sin" and "guilt" of sex.

These theological doctrines of the early centuries carry no terrors or inconveniences to the rich and powerful or to practically all of the more intelligent people in or out of the churches.<sup>1</sup> They practise birth control and they space and intelligently limit *their* families, without the practice of unhealthy continence and without the slightest fear of St. Augustine's hell and damnation.

If *they* want a divorce, even an ecclesiastical one by *mutual consent*, it may also be had for all practical purposes in what is *in effect* one of the most interesting "divorce" courts of our time—"The Rota" at Rome.

<sup>1</sup> These doctrines of the Pope on birth control are the doctrines of almost all of the reactionary element of the Christian churches.

## B

## THE POPE AND DIVORCE

THE theological key to Catholic Church "divorces" by mutual consent is found in the Pope's reference to the "sacramental" conditions or "consents" of couples in sacramental church marriage. This kind of marriage is supposed not to permit of any divorce. Theoretically, the Pope may be right. Practically and for all modern purposes, the Pope is wrong.<sup>1</sup>

The Holy Father writes in his Encyclical:

"These things are so contained in matrimony by the very marriage pact that if anything to the contrary were expressed

<sup>1</sup> Perhaps the reader recalls the accounts of a few years back of the "annulment" granted by the Rota "divorce" court of Rome. There was notably the one to the daughter of a famous New York family from her titled English husband. And that other annulment of the marriage of a rich and famous inventor. These easy divorce annulments "brought forth protests against the Rota from Bishop Manning himself." The bishop found it quite impossible to "stomach" this type of divorce by mutual consent even from the Rota at Rome, after both couples had been living together, at least one of them with several children, for fifteen or twenty years.

During the publicity attending one of these cases a Catholic married woman came to see me: "Judge," she said as she laid a newspaper account of it before me, "we want a divorce and our case is just like *that*—we, too, agreed before we married that if we did not get along we'd separate. Of course we might have also agreed that we'd not have children until we wanted them. Why, Judge, don't you think most married couples have some idea like that in their minds. If they don't, it's easy to think they did."

"But, my dear child," I answered her, "you have come to the wrong court. We are not so liberal even in faked divorces by mutual consent. You have a good ground for 'divorce' or what they would call 'annulment' in your church. For that you will have to go to the 'divorce' court or Rota at Rome. I have a friend very prominent in the Catholic Church who told me of his 'annulment' at the Rota on some such grounds. He is now married again in the church. But he told me also what it cost him. I do not know who got the money. I doubt if you are either of sufficient prominence or wealth to get a church 'divorce,' 'annulment,' or by whatever name you call it, though you have ample and equal grounds." *She never got it.*

I make no attempt to follow other types of "divorce," "annulment" given by the Rota of Rome. They may also be had, I understand, under what is known as "The Pauline Privilege."

It is claimed that these were not marriages in the first place. But to "make them not marriages in the first place" by these rules may be just as simple a form of cheating as our American system of most divorces without any genuine legal ground whatever.

in the consent which makes the marriage, it would not be a true marriage."

This means that if it is shown in the Rota<sup>1</sup> "divorce" court at Rome, on the proof presented on the part of either one of the discordant couples seeking the dissolution of the "marriage," that *before* the marriage they agreed to something deemed contrary to the "sacramental" rules to make it binding, then you may have it "annulled."

To ordinary folk in this modern age all of these theological subtleties and hair-splitting refinements about what is sacramental in church marriage have little practical purpose. If a Catholic married couple ever desire a divorce, sanctioned under Catholic Church authority, and they have the prominence and the price and know the ropes, these sacramental consents serve as a convenience for clever, well-paid ecclesiastical Rota court agents in getting them what they want—a Catholic Church annulment. For all practical purposes this adds to the civil divorce the ecclesiastical "divorce."

We add a court scene at the Rota for more concrete explanation.

Witness before the Holy Father's ecclesiastical court:

"Oh, yes, we did agree before we married that if our marriage was not a success we would separate. Quite so."

Next case. The wife takes the stand:

"Oh, yes, I am sure that John remembers. I married John because *Mother forced me to*, not because *I wanted to*. Yes, I have lived with John for twenty years, and we have a number of children, and we have never made any complaint against each other."

Next case.

"Oh, yes, it's quite true we did agree before marriage that we would have no children until we wanted them."

And the Rota "divorce" court of His Holiness the Pope at Rome rises as the judges announce, "Decrees granted."

These are some of the church causes for "divorce." But what the church furnishes is the "annulment form." Any wise couple may plead and prove such simple situations for divorce by mutual consent under the rule of the Rota at Rome. Eighty to ninety per cent of divorces are by mutual

<sup>1</sup> Is the Rota "divorce" or "annulment" court at Rome more sacred against abuses, when abuses are necessary to get what you want, than our divorce courts are?

consent through more or less collusion in the American courts. Yet mutual consent as a ground for divorce is denied by both church and state. And by both it is insisted upon for marriages. Human nature is much the same everywhere when it comes to getting what it wants. If it wants to marry by mutual consent, it wants to separate by mutual consent. And it does. Then how can it be expected that the rule of subterfuge and collusion would be absent in "annulment" cases of the Rota at Rome? If the seed of dishonest "divorce" and "annulment" exist in both tribunals, as they do, collusion is not only unavoidable, it is to be expected. The honesty of the courts, judges or lawyers, civil or ecclesiastical, generally cannot be questioned. It is the *system* that I criticize and question.

Collusive "annulment" certainly is not absent among the annulments or "divorces" of the great and the near great, or those of wealth or power, that in such cases have been served so well by the Rota at Rome.

With or without collusion this Rota "annulment" is in effect a "divorce." All the hair-splitting rules and mental gymnastics of clever theologians are put into action to prove that all of this is not a "divorce." Heavens, no! That is contrary to the law of God. So the *law* is not changed. The *name* is. A "divorce," by any other name, even if twin-sister to "annulment," will serve all practical purposes just as well in modern marriage even under the authority of the "stern doctor" of Hippo.

That the "annulments" of the Rota at Rome are quite limited in number, as compared to divorce court divorces, is neither answer nor credit to inconsistent theological doctrines. Any ecclesiasticism that finds a practical method of relief for a favoured class from the human agonies of an indissoluble marriage system in withholding the same remedy from the less favoured class, only proves, in both cases, that it does so for the certainty of its own power. There are, from the viewpoint of these theological doctrines of the Pope, many reasons why Rota "annulments," or divorceless divorces, should not be permitted to become plentiful among the exploited masses.<sup>1</sup>

<sup>1</sup> One reason for lack of a larger list of Rota annulments is thus accounted for. "American Roman Catholics," explained a prominent Catholic of my acquaintance, "do not take these 'sacramental' rules of the

The rule of any modern marriage system of church or state that the *mutual consent* it may properly exact of the couple before marriage is revoked or *reversed after marriage*, is bound to promote collusion and dishonesty in marriage and divorce. Its advantages, if there ever were any, existed under conditions of the dark ages when women were slaves. To-day women have come into their proper independence and economic freedom to compete with men if they want to. Reactionary ecclesiasticism doggedly refuses to permit marriage to meet these new conditions. This was true in earlier times where the marriage rule of a relative power required the youthful groom to prove that he had slain at least two crocodiles. But conditions changed. Crocodiles became scarce. The priests would not change the rule. It was their "law of God." There followed many evils to marriage. The tribal reactionary clergy were politically powerful. It was not until free love, or cheating in marriage, because of the crocodile prohibitions, had become scandalous that

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church as seriously as in former times. Take Blank in my family. He has a civil divorce. It is the usual faked mutual consent affair. Each of the couple is again remarried—this time seemingly quite happily. In both cases they attend Mass and church functions with reasonable regularity. Their *economic and social* life is all that any good Catholic could desire. They are quite loyal to the church too. They practise birth control and thoroughly disapprove of your 'companionate marriage' programme. Of course they fail to see the humour of *that*.

"They are just a sample of the increasing number of divorced Catholics who are not enough concerned about the 'sacraments' even to get a Rota 'annulment' that I am sure they could get if they cared to. Their loyalty for Mother Church keeps them sufficiently within its folds for 'practical purposes.' Their children usually attend its schools and retain *their* rights to 'sacraments' that in time will mean even less to them than their parents."

And there is the delicious humour of that charming, distinguished Catholic lady friend of ours. An eminent Catholic bishop affectionately refers to her as "our daughter"—of the church. She has one divorce by mutual consent. And one "separation" by mutual consent. That it is not also a faked divorce by mutual consent, I personally happen to know, is due to a disagreement over money settlement. The husband of the separation, as is well-known, calmly had his affair with another woman in spite of the "bond". And this woman, with her child born out of wedlock is (as I understand it) entitled to absolution for her "sins."

This "legal" wife of the former divorce and present "separation," with her brilliant pen, and access to the public Press, is the chief aid to the good bishop, in his campaigns against divorce and The Companionate Marriage.

No wonder my prominent Catholic friend concluded his comments with reference to the Catholic attitude on birth control, divorce, etc. "You see, in America, a prominent Catholic can do most anything he wants to in these matters, if he just does not *deny* the *authority* and the *dogmas* of the church."

they yielded. *Then* the politicians changed the rule to one crocodile, and finally to none at all.

Are we too in our crocodile age?

Most modern married people live together because they love each other, and because by mutual consent they want to. It is by this love and sensible consent, *that is mutual*, and through real education, religion, culture, good taste and understanding of the facts of life that they will have their children when they want them and learn to make a success of their marriage. It is not and never will be by the coercive force of rules of dogmatic theology.

The denial of this truth by the reactionary element of an ecclesiastical power and any concession to reasonable rules of marriage with reference to it, is the greatest menace to the marriage and morals of this age. Forbidding the legal expression of this truth is largely responsible for the subterfuges, collusions, frauds and dishonesty in divorce and annulment courts and most of the sex evils of our time.

If most married people live together successfully in true marriage, it is not because of these fraud-breeding, coercive, consorior, prohibitive rules of marriage, but in spite of them. We still owe something to the inherent decency of mankind. The "total depravity" doctrines calling for some of the present unreasonable rules of moral conduct form a dogmatic theology belonging to another age.

## C

### THE POPE AND SEX

I HAVE pointed out what seems to me are inconsistencies in the Pope's doctrines on the subject of divorce. And there seems to be just as much inconsistency in his theological doctrines forbidding sex desires, or the lust and sin of sex in marriage, as well as out of it.

Writing on the "law of God" on this subject, he says that it "forbade also even wilful thoughts and desires of suchlike things: 'But I say unto you that whosoever shall look on a woman to lust after her hath already committed

adultery with her in his heart,' which words of Christ our Lord cannot be annulled even by the consent of one of the partners of marriage, for they express a law of God and of nature which no will of man can break or bend."

The Holy Father, with commendable zeal for his sincere and well-meaning purposes, again and again directs all the force of his Encyclical letter against the "desires" of the flesh and pleads for the "faith of chastity." "For matrimonial faith demands," he writes, "that husband and wife be joined in an especially holy and pure love, not as adulterers love each other, but as Christ loved the church." And, "Great is the force of example, greater still that of lust; and with such incitement it cannot but happen that divorce and its consequent setting loose of the passions should spread daily and wreck the souls of many like a contagious disease or river bursting its banks and flooding the land." And eloquently he protests against "the art of sinning in a subtle way" against the "virtue of living chastely."

After many such passages against the "passions" and "lust" and "sin" and "unchastity" and other devastating desires of the "flesh" the Holy Father himself then provides for the "breaking and bending" of most all of these rules, in this passage:

"Holy Church knows well that not infrequently one of the parties is sinned against rather than sinning when for a grave cause he or she reluctantly allows the perversion of the right order. In such a case *there is no sin*, provided, that, mindful of the law of charity he or she does not neglect to seek to dissuade and to deter the partner *from sin*. Nor are those considered as acting against nature who in the marriage state use their right in the proper manner although on account of natural reasons *either of time* or of certain defects, *new life cannot be brought forth*.

"For in matrimony, as well as in the use of the matrimonial rights, there are also secondary ends, such as mutual aid, the cultivating of mutual love, and the quieting of concupiscence which husband and wife are not forbidden to consider *so long as they are subordinated to the primary end and so long as the intrinsic nature of the act is preserved*." (Italics ours.)

The Holy Father here tells us that it is not such violation of the "law of God" to "look on a woman to lust after



her" *if she is pregnant or if one believes she is*, or if there is no artificial interference. That one is pregnant should be a very simple thing to believe, in certain cases, if one wants to believe it. In the "collusions" of divorce it is a very simple thing to agree mutually on a "cause" for divorce by convincing oneself that there is a cause when there is not. If these are the laws of God as to lust and sin and chastity and purity, as explained by the Holy Father, then I plead for consistency. Why not stand against such sinful sex desires being sinless *after pregnancy*, or after you conveniently believe there is a pregnancy, as *before pregnancy* or when pregnancy is not intended?

Can it be that *this* inconsistency (there are so many of them) is prompted as a promise of reward to the rebellious against St. Augustine's morals and marriage code? That is to say, if the couple will induce, or think they have induced, a pregnancy, or offer no interference with it, that there may be more certainty of seed for Mother Church, they can indulge to satiation in what would otherwise be the lustful and sinful desires of sex?

What the effect of this license, thus given by the Pope's theological doctrines as to sinless sin and lustless lust *after pregnancy*, is to have on the unborn child, His Holiness does not say.<sup>1</sup>

In his Encyclical (against *The Companionate Marriage* proposals for honest birth control and divorce) the Pope advocates another one of those dangerous kinds of birth control when, on the authority of St. Augustine, he writes:

"In the sacrament it is provided that the marriage bond should not be broken and that a husband or wife, if separated, should not be joined to another *even for the sake of offspring*."

And the Holy Father, with warm approval, adds:

"St. Augustine calls this the blessings of matrimony."

This enforced continence, or unhealthful and dangerous birth control, is "the blessings of matrimony"! And all

<sup>1</sup> This permission to indulgence of sex desire does not impart the Pope's exemption to the child of the *original sin* in which it was conceived to be born in iniquity. Suppose the innocent child's stain from that *original sin* of our first parents is not washed away by baptism. Then the very least of the child's frightful penalties, for what it has had no part in whatever, by the Pope's doctrines (as I understand them), is that the child will be cast into outer darkness and never see God.

because of what to most people would seem by very unreasonable restrictions, *it furnishes cruel punishments forcibly to carry out a theologian's theory of the utter indissolubility of marriage.*

It seems to have escaped the notice of His Holiness that the enforcement of this doctrine would destroy the very primary purpose of marriage, namely, "*children and the family.*" It is no sin in the Catholic Church for a discordant couple to separate so long as they never marry again, and practise the treacherous birth control of continence. It is conceivable, that if everybody married and then exercised this non-forbidden right of "separating," thus condemning themselves to bachelorhood and continence, the human race could be mostly blotted out. Heaven and eternity would be deprived of its angels without any sin, all under this doctrine of St. Augustine. It would be a "blessing" of marriage. If the present increase of separations in America were without divorce and the right to re-marry, there would be such a decline in the birth rate as to be a national calamity.

From the Roman Catholic viewpoint another objection to this dangerous birth control plan of St. Augustine would be its unnatural prevention of thousands of children coming into life and their right to heaven and eternity hereafter. Who shall account to God for *this* "crime against the innocent unborn"?

The Pope replies:

"And the objections brought against the firmness of the marriage bond are *easily answered*. For in certain circumstances imperfect separation of the parties is allowed, *the bond not being severed*. This separation, which the church herself permits and especially mentions in her canonical law, in those canons which deal with the separation of the parties as to marital relationship and cohabitation, *remove all of the alleged inconveniences and dangers.*" (Italics ours.)

That is, the "*bond*" is saved, but the "*divorce*" is granted. It is called a "separation." And so "without sin" it is perfectly proper for the couple to separate, never have any children or family, or if they have any to give up their joint care; never see each other again. *All* the sinful elements of "divorce," and that, too, without "sin" *except* for the right to *legitimate* sex relations. Except in lawful marriage sex relations are sinful and forbidden by the law of God

and church. No new marriage is permitted. Each one of the sinlessly separated couples must now wander alone through life without a mate—without a normal sex existence.

This is not in the interest of morality or humanity. The Holy Father may think it is in the interest of Mother Church. For it would seem that by the Pope's doctrines the *bond* of matrimony is primarily, if not solely, for begetting offspring under the specific rules of the Catholic Church. And if it is not for the church, what becomes of the offspring? The great authority, so often quoted by His Holiness, St. Augustine, frankly tells us (if the Holy Father failed to mention it), "Whoever is separated from the Catholic Church" is under the "wrath of God . . . shall not have life," in a word, is damned to hell forever.

Not even the severity of those cults, that with equal sanctity, in the name of *their* gods, add live wives to funeral pyres of dead husbands, is fraught with such peril in its treachery to truth, to human justice and to life itself. That funeral pyre menace to happiness and life at least has the mercy of bodily extinction in sparing agonies of the living that so often come from the enforcement of an impossible doctrine so frightfully destructive to morality and the human race.

If those well-meaning ascetics could only come out of their cloisters and deal with the problems of real life, of real men and women, I believe they would be horrified at the effects of what they are saying and doing.<sup>1</sup>

Think of it! A couple may have a "divorce" of this kind by mutual consent in the Church of Rome, the simplest, easiest "divorce" by mutual consent that society affords. But they can no longer function as nature decreed. They must live unnatural lives and struggle with its temptations, in which yielding is "sin" and sin is damnation—for them. Not one, as in that other cruel rule, but both, *however much one may be absolutely innocent*, must mount the funeral pyre of continence, suppressions, inhibitions, deprived of begetting *wanted* children and families. Such is the train

<sup>1</sup> No practical modern mind attaches any importance, such as these theologians do, to their strange metaphysical fictions or entities having to do with what they call the "sacramental" in marriage. Its refined hair-splitting does not belong to the practical facts of marriage in this age. It aids enormously, however, in "divorce" or "annulments" in the Rota at Rome.

of human misery, thus imposed by these theologians. The funeral pyre of real fire, for the hapless innocent one involved, at least has none of the same kind of devilish evils that flow from doctrines so destructive.

“Free love,” promiscuity, licentiousness, abortions, and the mounting irregular sex relationships, of which the Pope complains, is due more to the impossible sex and marriage doctrines of these old-time theologians quoted by the Pope than to all other causes combined.

People in America are not only separating in proper cases of discord and incompatibility but most of them are re-marrying. This is because they have repudiated the Pope's doctrines and had a divorce even if it *was* bootlegged in most cases. The facts show that *this* has been the real blessing of marriage and St. Augustine's plan would have been its curse. The divorced couples, mostly childless, by getting married again and having children are not only increasing the birth rate but also the marriage rate. Thus through *divorce* both are being saved from a relative annual decrease.

What a frightful condition we would have had with the curse of these hopelessly discordant couples taking St. Augustine's advice seriously and just getting “sinlessly” separated without “sinfully” breaking the *bond* and being joyously natural again.

This is promising in view of the fact that in the United States, according to the last published census, there were approximately ten million men between the ages of twenty and thirty. This is the best age for marrying, for producing children and families. Yet only a little more than one-third of these men are married until after thirty. By church and state they are commanded to continence. How many of them are? How much better and morally healthful it would be if the great majority of this nearly seven million unmarried men (out of the total ten million) would get married even *if* most of them got divorced. They would get married again and that would be a real moral asset to the nation. Most of them now are neither continent nor have any promise of legitimate children or of making homes or families.

## D

## THE POPE AND EDUCATION

AND now to the Pope's objection to education in the art of love and marriage and the laws of sex and life. This concerns one of the four points of "The Companionate Marriage" programme. Such objections, as he points out again and again, are due to his claim that the sex functions are for the prime purpose of begetting children and maintaining a family. Then he argues of what use is the truth to women, especially about the physiology of sex and life? Would he leave their functions in this regard to the accidents of chance or the "lustless" lusts of men?

But here again come other inconsistencies.

The Pope's doctrines, as now announced, means, if it means anything, that sexual desires in marriage are sin only when there is interference with the begetting of a child. What this amounts to now is that the Roman Catholic Church makes pregnancy, or believed pregnancy or non-interference, a licence to sexual indulgence. In such circumstances no limit seems to be implied.<sup>1</sup>

In view of pregnancy or non-interference being now made a licence to unbridled "lust" without "sin," what right has the Pope to say, ". . . the faithful will fly as far as possible from every kind of idolatry of the flesh?"

He is indulgent to "idolatry of the flesh" that is no longer even intrinsically sinful if there is, or one believes there is, a pregnancy, or even if it is not interfered with.

And, if there be virtue in consistency, how much less has he any justice now to write:

"Such wholesome instruction and religious training in regard to Christian marriage will be quite different from that exaggerated physiological education by means of which

<sup>1</sup> I do not discuss many other obvious inequalities and injustices, even absurdities of the Pope's doctrines, as to this "right to sin," as, for example, between a sterile couple and a fertile couple.

in these times of ours some reformers of married life make pretence of helping those joined in wedlock, making much of these physiological matters, by which is learned rather the art of sinning in a subtle way *than the virtue of living chastely.*" (Italics ours.)

But now, without subtlety, His Holiness has established a new doctrine. It is the "virtue" of living "unchastely." There is no *sin* or *lust* in the passions and sexual desires of the flesh of the faithful under the certain conditions there prescribed. These "sinful idolatries of the flesh," to which the faithful may thus fly in safety as for the "sin" of their joy and pleasure, are the same when not interfering with pregnancy as when interfering, or whether before or after that circumstance, whether pregnancy exists or one only thinks so. That is, whether or not such sex acts are "subordinated to the primary end and so long as the intrinsic nature of the act is preserved. . . ."

Then why should the Holy Father seek to deny the womanhood and the motherhood of the race "physiological sex education"?

Does he not know that many women suffer from frigidity and other obstacles to the Holy Father's permitted "joys of the flesh"? In no equality then with man may women also enjoy this "lustless lust" and "sinless sex and sin" and "chaste unchastity" now solemnly sanctioned by the Morals and Marriage Code of the Holy See.

The rights of women to be on an equality with men in these permitted sex desires and pleasures depend in large measure on scientific and wholesome sex education. Ignorance in such matters is a *prolific* cause of divorce and unhappiness. Just because helpless people must be doomed to a divorceless life—where divorce is just and needed—is no reason to add to such cruelty the ignorance that promotes the cause of divorce and unhappiness. The fact that no divorce is permitted is all the more reason why the tortures of an unwanted married life should not be refined by enforcing on people ignorance of the truth about those sex desires and sex pleasures of life approved by the Pope. Not even the Holy Father can *make* people good by *keeping them ignorant*. His doctrines might still keep them unhappy and miserable. Why do that when it is not even punishment for any *sin*?

Greater than the injustice to men and women of some of these theological doctrines is their sin against the childhood of the race.

Civilization's greatest crime is against children. It is bad enough for civilization's older generation to be lying to children. It is worse to rob them. That is what we do when for our ignorant or selfish purposes we take away their minds. A heathen custom for untold ages bound up the feet of certain children. But what is the crime of foot binding to the crime of mind binding?

To perpetuate much of civilization's savageries, cruel advantage is taken of little children. Their minds are largely atrophied and stereotyped through forcing them to think what the dead past thought. I fight for their release from this tyranny to which greed for power and for profit has enslaved them. I fight for their right to be educated in the main purpose of teaching them *how to think*, not just *what to think*.

I saw these youths, even those of Italy, when in Rome, in the stirring days of June and July, 1918, when in the rich palaces at the Vatican, I visited His Eminence the Cardinal Secretary of State, in their behalf. They were even then being slaughtered on the battle fronts of the world—even as I saw them from Monta Grappa to the sea—when young Austria would cross the Piave to the heights of Montello, as young Italy drove them back until that river ran red with the blood of youth—poured out—for whom and what?

And now to return to the battlefields of "The Dangerous Life." They are of more importance than those of *that war*. On its battlefields lie dead each year among the slaughtered, hundreds of thousands of women and millions of children born and unborn. They are sacrificed unnecessarily, largely through the ignorances imposed by some of the doctrines of old-time theologians. The victims of this lust and greed for power and for profit in a world system that rears its battlements on centuries of cruelty, blood and brutality, carnage and slaughter, are mostly its still ignorant, helpless slaves.

Recently while in the heart of Ku Klux fundamentalism, and fanatical prohibitionism, in a southern state, my charming host had been enthusing about the advantages of prohibition. He told me why, as a good southern Democrat, Protestant

churchman and loyal prohibitionist, he was against Al Smith for President. It was all said between the suppings of his mint julep that added to his enthusiasm for "prohibition," if not for Al Smith. When, later, with much pride, he showed me his well-stocked "cellar," I dared to ask: "How did you happen to be so thoughtful in laying in such a supply of *pre-Volstead* liquor?" For surely, I thought, with his enthusiasm for prohibition and hostility to Al Smith, he wouldn't patronize a bootlegger. Then came an explosion of truth-revealing defence mechanisms:

"Why, don't you understand, suh, that prohibition was never intended for gentlemen? *Never!* It's only for 'niggers' and 'po-whites,' suh! They wouldn't work for us without it, suh."

My host was the pride of the Chamber of Commerce, the club and the church. And, as such, he continued:

"Our law officers know the *meaning* of the law, suh, and when it's known it's a gentleman needin' his liquor—there's not the slightest trouble gettin' it, suh, not the slightest—good liquor, too, suh—oh, yes, suh—good liquor—my 'cellar' tolerates no other character of liquor—you are perfectly 'safe' in samplin' anything you want."

And so I left this charming "gentleman" and aristocrat of my dear old Southland wondering if the other coercions of conduct in churchly prohibitions of scientific, safe and healthful birth control, honest divorce and sex education, bred the same brood of special privileges for the system's pets with their attendant evils, hyprocrisies, slaveries, lies, crimes and injustices.

And now, in the light of what seems to me to be *the truth*, and without intent, by these observations, to give offence to His Holiness the Pope, I trust, as the representative of God on earth, he will not judge me too harshly.

May I, then, with the deep respect I have for the good (but not the *evil*) in the church of my childhood and of my father and mother and of my old and respected teachers at Notre Dame, crave the indulgence of His Holiness the Pope and ask him to read and not suppress this book, a copy of which I send him with my cordial appreciation of his own personal sincerity and honesty, however much he may be mistaken in the advocacy of some of these theologians' doctrines that have no place in married life to-day and if



enforced would only bring back upon the twentieth century the sex sins and guilts and curses of the dark and dreadful days.

If he will read this book he will find that I at least have, what even His Holiness will concede, is the Christian virtue of giving sinners a chance over and over again; to help them and not to hurt them.

With many earnest people we are engaged in a battle to give marriage a decent chance; in order to help it and not to hurt it. Such is our faith in its functioning as a much needed institution for the helpfulness and happiness of the human race. The legal changes we plead for are not offered as panacea or a cure all. But from long experience they are offered as something better than the moral anarchy and lack of social direction in America's decreasing marriage and increasing divorce rates.

All of this has grown up under the coercive moral and marriage rules of the reactionary element of the clergy. It is doubtful if there is any increase of marriage at all in proportion to the increase of population. The very slight increase, relatively, in recent years is believed to be due to the increase of divorce and remarriage of divorced couples. All this in spite of the fundamentalists and because of their despised divorce. Irony indeed!

We ask no one to accept our suggestions unless their reason approves, least of all those whose religious dogma opposes. Of them we only ask a hearing. They must not try tyrannically to rule the lives of those who differ; or they violate constitutional rights.

Finally then, with the Holy Father and his ally, Bishop Manning, and other of the fundamentalist clergy, this is the issue:

We believe that marriage was made for man, and that marriage must be so directed as to promise more permanency and success. This, we believe, may be done by its sane adjustment to social changes that make for the new order with its new conditions of life.<sup>1</sup>

His Holiness and his fundamentalist allies believe that man was made for marriage; and that, as to marriage, man must be coerced by laws and threats to ignore these social

<sup>1</sup> See Chapter XV of this book.

changes, that he may still live by the old order and conditions of life whatever the human tortures he is compelled to endure.

His Holiness declares that the aim for heaven hereafter is worth the agony here, and so the old rules of the old conditions must be accepted by all men. All mankind, the Pope says in his Encyclical, were born and intended "not for earth and time" but "for heaven and eternity."

We believe that mankind is born for a *heaven here on earth*. If they follow the rule of reason helped by the light of science and *the freedom of the right of man to think*, it may be their only certainty of any heaven. By theological dogmas it is positively proven by the Holy Father himself in his Encyclical that for most of mankind, at least in America, there is certainty of hell hereafter and no hope of any heaven except in their chances here on earth.

His Holiness believes, as boldly proclaimed to all America in his Encyclical, that mankind is born here only temporarily, for a hell on earth, if necessary to reach this "heaven in eternity" *promised for the faithful only*, by St. Augustine, who obey the Rules of Rome.

The greatest peril to truth on earth to-day is the power of organized paranoia.

It is mostly assertive in powerful groups of fundamentalists with their superstitions, savageries, prohibitions, coercions, censorship and tyrannies. These rest in their assumed and unproven claims to authority. Claims rooted in the cemeteries of the dead and buried past. Cemeteries that breed live ghosts. Ghosts in sheeted grave clothes that stalk amidst the frightened faithful, spreading enslaving fears.

"The most menacing groups are the Catholic and so-called fundamentalist, which have much in common, particularly in the direction of their gaze toward the past and in their finding of authority there. In the one case, the source of inspiration and authority is an organization; in the other, it is the series of documents gathered into the Bible. But the hopes and aims of both groups, if successful, would induce ideas and ideals of the medieval centuries into the twentieth century, bringing in their train untold confusion and disaster.

"It may be pointed out, perhaps as an aside, that a group is liable to assume that its size, influence, or age is evidence that its opinions are entirely correct. Let it be emphatically

stated that such a conclusion does not logically follow from the premises. There is a basic confusion involved when any tendency to 'throw back' to methods and ideas of bygone days is regarded as necessarily implying a purifying or elevating process. And any group, religious or other, which is confident that it is absolutely right, that it is a 'chosen group' or 'chosen people' is thereby displaying unmistakable signs of paranoia. The individual who so estimates himself is regarded as definitely insane. And so should such a group be regarded."<sup>1</sup>

And now His Holiness and others who may read these chapters will better understand why this is a book of the battles of "The Dangerous Life."

BEN B. LINDSEY.

DENVER, COLORADO.  
*February, 1931.*

<sup>1</sup> *Individuality and Social Restraint*, by Geo. Ross Wells, Professor of Psychology of the Hartford, Conn., Seminary Foundation, pages 129-130. (D. Appleton & Co., New York and London, 1929.)









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